

Volume: XXIII
Pages: 470
Exhibits: (See Index)

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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COMMONWEALTH OF MASSACHUSETTS
vs. Indictment No.
KAREN READ 2282CR00117
* * * * *

Day 23 - Trial with Jury
Before the Honorable Beverly Cannone

APPEARANCES:

For The Commonwealth:
BY: Adam Lally
Laura McLaughlin
Assistants District Attorney

For Karen Read:
BY: Alan Jackson
David Yannetti
Elizabeth Little
Attorneys at Law

Norfolk Superior Courthouse
Dedham, Massachusetts
Friday, May 24, 2024

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

I N D E X

WITNESS: DIRECT CROSS REDIRECT RECROSS

Brian Higgins

(By Mr. Lally) 23-7

(By Mr. Jackson) 23-129

E X H I B I T S

NUMBER		PAGE
103	Twelve pages of texts with John O'Keefe	23-63
104	Fifty-six pages of texts with Karen Read	23-63
104A	Pages fingerprint texts with Karen Read	23-84
"PP"	Two pages from Exhibit No. 104A	23-175
"QQ"	Phone records, two pages	23-226
"RR"	Packet of documents re: Key Swipe Records, Canton Police Department, January 29, 2022	23-255

P R O C E E D I N G SMay 23, 2024

(Court in session at 9:09 a.m.)

(Defendant present. Jury present.)

THE CLERK: 22-117, Commonwealth versus Karen Read. May I have counsel identify themselves for the record?

MR. LALLY: Adam Lally, for the Commonwealth, Your Honor. Good morning.

THE COURT: Good morning, Mr. Lally.

MS. MC LAUGHLIN: Good morning, Your Honor. Laura McLaughlin, for the Commonwealth.

THE COURT: Good morning, Ms. McLaughlin.

MR. JACKSON: Good morning, Your Honor. Alan Jackson, for Ms. Read.

THE COURT: Good morning, Mr. Jackson.

MS. LITTLE: Good morning, Your Honor. Elizabeth Little, also on behalf of Ms. Read.

THE COURT: Good morning, Ms. Little.

MR. YANNETTI: Good morning, Your Honor. David Yannetti, for Karen Read.

THE COURT: Good morning, Mr. Yannetti. Good morning, Ms. Read. Good morning, jurors.

THE JURORS: Good morning, Your Honor.

THE COURT: So I have to ask you those same

1 three questions. Were you all able to follow my
2 instructions and refrain from discussing this case
3 with anyone since we left here on Wednesday?

4 Everyone said "yes" or nodded affirmatively.

5 Were you also able to follow the instructions
6 and refrain from doing any independent research or
7 investigation into this case?

8 Everyone said "yes" or nodded affirmatively.

9 Did anyone happen to see, hear or read
10 anything about this case since we left here
11 Wednesday?

12 Everyone said "no" or shook their heads.

13 Thank you.

14 All right. Mr. Lally, your next witness,
15 please.

16 MR. LALLY: Your Honor, may we approach just
17 briefly? I apologize.

18 (Whereupon, there was a sidebar conference as
19 follows:)

20 MR. LALLY: Good morning.

21 THE COURT: Good morning.

22 MR. LALLY: Just in reference to -- and I
23 apologize now for not having this conversation with
24 Mr. Jackson sooner, but there is a little bit of
25 disagreement as far as Mr. Higgins and the text

1 messages. And I want to just clarify what the
2 Court's preference was before I begin.

3 So I think we are in agreement that those
4 redacted versions of the material that we received,
5 the troopers received from Mr. Higgins, that would
6 be marked as the exhibits.

7 I would also -- I don't think there is any
8 issue or objection with the other version, the
9 typed-out version, that's easier to read being
10 shown to the witness, or counsel can use it and
11 refer to it for pagination and everything like
12 that.

13 Mr. Jackson -- well, obviously, he can speak
14 for himself.

15 THE COURT: Why don't I let him speak.

16 MR. LALLY: Sure.

17 MR. JACKSON: There is no problem with the
18 transcripts. I asked Mr. Lally if anything is
19 actually shown to the jurors as a visual that it be
20 the actual exhibit, not the transcripts. That's
21 all. I don't care if the witness has the
22 transcript. I'm going to use the transcript
23 because I think it is very helpful. I just think
24 that whatever the jurors see, they should see the
25 actual evidence.

1 THE COURT: I mean, the whole purpose of it
2 was for ease of the witness, ease of counsel and
3 ease of the jurors.

4 THE COURT: I wish we had talked about this
5 earlier today. What did you intend to do with the
6 transcript? I found it helpful because it makes
7 sense of what's otherwise been very difficult to
8 follow. What did you intend to do with this?

9 MR. LALLY: Display it on the screen and have
10 the witness go through portions of it, not the
11 whole thing but different portions of it.

12 THE COURT: I did not print out the sort of
13 messy -- what we have. Are you going to start with
14 this right away or after the break?

15 MR. LALLY: No. I don't know how far I'll
16 get, but --

17 THE COURT: Do you have printed out the sort
18 of messy -- it looks like Ms. McLaughlin is going
19 to get it.

20 MR. JACKSON: She's got it.

21 THE COURT: Can I keep this copy? I won't --
22 all right. Let me take a look at these. Thank
23 you.

24 Ms. McLaughlin, I am going to ask
25 Mr. McDermott to make a copy of this.

1 MS. MC LAUGHLIN: Okay. Thank you, Your
2 Honor. Are we all set?

3 MR. LALLY: Sure.

4 (Whereupon, the sidebar conference concluded.)

5 THE COURT: Your witness, please, Mr. Lally.

6 MR. LALLY: Yes, Your Honor. The Commonwealth
7 calls Brian Higgins to the stand.

8 Whereupon,

9 BRIAN HIGGINS

10 having been first duly sworn, was examined and
11 testified under oath as follows:

12 THE COURT: Any time you are ready, Mr. Lally.

13 MR. LALLY: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. LALLY:

16 Q Good morning, sir.

17 A Good morning.

18 Q Could you please state your name and spell
19 your last name for the jury?

20 A My name is Brian Higgins, H-I-G-G-I-N-S.

21 Q And where do you live, sir?

22 A Barnstable County, Massachusetts.

23 Q And how long have you lived there?

24 A I've owned that property since approximately
25 2018.

1 Q And do you work, sir?

2 A I do.

3 Q What do you do for work?

4 A I'm a special agent with the United States
5 Department of Justice Bureau of Alcohol, Tobacco and
6 Explosives.

7 Q And how long have you been doing that?

8 A Just over 15 years.

9 Q Now, sir, prior to that, prior to your
10 employment with the ATF, what, if any, other positions,
11 what did you do for work before that?

12 A I was a lieutenant with the Cambridge Fire
13 Department.

14 Q And how long were you a lieutenant with the
15 Cambridge Fire Department?

16 A I was a lieutenant probably for about eight
17 years. Total, I was with Cambridge approximately 15
18 years.

19 Q Now, at some point, did you reside in the town
20 of Canton?

21 A I did.

22 Q When was that? Sort of what year to what
23 year?

24 A I think that it was shortly after my sister
25 passed away. So it was probably 2017 I purchased that

1 house. And I sold it in January of 2022.

2 Q And do you recall, was that early January,
3 late January?

4 A On or about January 5th.

5 Q And, when you sold that property, did you move
6 down to Barnstable County or did you live somewhere
7 else, as well?

8 A For a period of time, I rented an in-law
9 apartment in West Roxbury. And I had my property up on
10 Cape Cod, as well.

11 Q And that in-law property in West Roxbury, that
12 was in 2022, as well?

13 A Yes.

14 Q Now, sir, if I could turn your attention to
15 January 28th, 2022 into January 29th of 2022. Do you
16 recall those dates?

17 A Yes.

18 Q And do you recall what days of the week those
19 were?

20 A I believe the 28th was a Friday and the 29th
21 was a Saturday.

22 Q And, if I could take you back at least just a
23 day or so before that, specifically the 28th. On the
24 28th, where were you on that date initially?

25 A New York City.

1 Q And why were you in New York City, sir?

2 A I was in New York City for the funeral
3 services of Officer Mora and Rivera, who were killed in
4 the line of duty.

5 Q And fair to say there was a large contingent
6 of law enforcement there?

7 A Yes.

8 Q Including several people from Massachusetts?

9 A Yes.

10 Q And when did you go down to New York City?

11 A I believe it was the 27th of February. It
12 might have been Thursday.

13 Q So was there a wake and a funeral?

14 A There was a wake and the funeral. Some people
15 went to the wake. Some people went to the funeral.
16 There were services over those couple of days.

17 Q And you went to the funeral on the 28th; is
18 that correct?

19 A Yes.

20 Q And, at some point, do you make your way from
21 New York City back towards Massachusetts on the 28th?

22 A Yes.

23 Q And do you recall about what time of day that
24 was?

25 A Late morning, possibly.

1 Q And why is it that you were coming back on the
2 28th specifically?

3 A The anticipation of a blizzard.

4 Q And how did you -- you drove; is that correct?

5 A I drove my government vehicle down to New York
6 for the services.

7 Q And what kind of government vehicle was it
8 that you drove down and back?

9 A That was a Dodge Ram pickup.

10 Q Now, on the way back, who, if anyone, came
11 with you for the ride back from New York City to
12 Massachusetts?

13 A Brian Albert, Kevin Albert and Eddie
14 Hernandez.

15 Q And who were they to you and what, if any,
16 relationship do they have to your work in law
17 enforcement?

18 A Well, first and foremost, they're all friends.
19 Kevin Albert is a detective with the Canton Police
20 Department. Brian Albert was a sergeant detective with
21 the Boston Police Department. Eddie Hernandez, also a
22 detective with the Boston Police Department.

23 Q And how long had you known each of these
24 individuals?

25 A So out of the group, Eddie Hernandez would be

1 the person that I knew the longest. I had worked with
2 him back in the early '90s back at the Mass. General.
3 Then it would probably be Brian Albert. I may have had
4 some contact with him when I was on the Cambridge Fire
5 Department, assigned to the fire investigation unit.
6 And then Kevin Albert would be probably the last in the
7 three that I knew.

8 Q Now, speaking to the Canton Police Department
9 at that time, as far as your assignment went with work,
10 where was it that you worked out of or where was sort
11 of your base of operations, shall we say?

12 A Canton P.D. I had an office there.

13 Q And how was it that you came to have an office
14 at Canton P.D.?

15 A That relationship was through Chief Berkowitz,
16 born through a tragedy. When my sister passed away, we
17 became friends, and he offered up the space because I
18 had also moved there. So it was close. It was a
19 jumping-off point.

20 Q And were you the only federal agent that had
21 space within the Canton Police Department?

22 A I was the only one that had an office. I
23 believe there was an HSI agent that might have had some
24 access there to come in and hook up his computer and
25 stuff. And there was also an MBTA police detective,

1 transit police detective, who also had access there.
2 But I was really the only one that maintained a desk,
3 so to speak.

4 Q And as far as your work or familiarity with
5 work as far as federal law enforcement officers, is
6 that abnormal to have access to a local P.D. or have an
7 office or a desk there?

8 MR. JACKSON: Objection.

9 THE COURT: I'll allow it.

10 THE WITNESS: No. It's not abnormal to have
11 space within a department that, you know, you work
12 closely with.

13 BY MR. LALLY:

14 Q Now, as far as the ride back is concerned,
15 when you drive from New York City back to
16 Massachusetts, about how long a drive was it?

17 A So typically we -- I'd say like a four-hour
18 ride depending in traffic. This was longer. And I
19 would also factor in the fact that we stopped and ate
20 on the way back.

21 Q And, when you arrived back to Massachusetts,
22 where specifically in Massachusetts is it that you
23 first go?

24 A So the first place that we went was a Boston
25 Police Department district in Charlestown where

1 Brian Albert and Eddie Hernandez had parked their
2 vehicles.

3 Q Now, as far as you know, had they driven down
4 to New York City or how did they come to be in New York
5 City, if you know?

6 A I believe that Brian Albert, Eddie Hernandez
7 and Kevin Albert all flew down to New York.

8 Q And they drove back with you because of the
9 storm; is that fair to say?

10 A Yes.

11 Q Now, after dropping them off there, where did
12 you go from there?

13 A I went back to the Canton Police Department,
14 where I dropped off Kevin Albert and then switched
15 vehicles, got into my Jeep Wrangler, and I traveled up
16 to the Hillside in Canton.

17 Q Now, as far as traveling up to the Hillside in
18 Canton, who, if anyone, did you have plans with or how,
19 if anyone, did you coordinate with as far as going to
20 the Hillside?

21 A Brian Albert agreed to meet me there.

22 Q And, as far as switching from your government
23 vehicle to a personal vehicle -- is that correct?

24 A Yes.

25 Q And why did you do that before going to the

1 Hillside?

2 A Because I was technically no longer on duty,
3 so to speak, even though I had been at a funeral. But
4 I knew I would be consuming alcohol and we have a
5 policy against that.

6 Q Now, as far as vehicles related to you,
7 whether they be personal or work in the Canton P.D.,
8 how many vehicles did you have at that location?

9 A So I would have had my government truck that I
10 park there. I would have had a surveillance vehicle
11 that I park there. And, at times, it would sometimes
12 flip in and out between a pickup truck that I had and
13 the Jeep, itself.

14 Q And the Jeep that you were driving that night,
15 can you describe the Jeep, what it looked like, what
16 kind of Jeep it was?

17 A So it's a 2011 Jeep Wrangler, gray in color.
18 And, at the time that I was driving it on the 28th and
19 the 29th, the next day, it had a plow on it.

20 Q And the plow that you had affixed to the Jeep
21 Wrangler, is that -- how big a plow are we talking
22 about?

23 A If I was to guess, it was probably six feet
24 eight inches. I believe they make them in two formats,
25 six-eight and I think seven-two. But I believe I have

1 the smaller blade on that Jeep.

2 Q And how often would you have -- was that like
3 a year-round thing or how often -- when about would you
4 have that plow affixed to the Jeep?

5 A Inclement weather or impending inclement
6 weather.

7 Q And is that something that you used as far as
8 -- what, if any, use did you put the plow on the front
9 of the Jeep to?

10 A To help family and friends, clear the property
11 at the Cape. I had used it when I had the house in
12 Canton.

13 Q And so you go to the Hillside. Do you know
14 about what time it was when you got there?

15 A No. Again, it would have been after I dropped
16 off Kevin Albert. It definitely would have been dark
17 at that time.

18 Q And the Hillside, is that an establishment
19 that you're familiar with? You had been there before?

20 A Yes.

21 Q And about how long was it after you arrived
22 that Brian Albert arrived?

23 A Shortly thereafter probably, because I had
24 traveled back, dropped the vehicle off. He may have
25 even beat me there because I went to the station and

1 dropped Kevin off. But I don't think it was
2 contemporaneous, but it was in close proximity.

3 Q And, once you got to the Hillside, how long
4 were you there and how long was Mr. Albert there?

5 A So I had something to eat. I had something to
6 drink. The approximate time, maybe an hour or so. And
7 then Brian left before me. I remained. He left.

8 Q And, if you know, about how long before you
9 left was it that Brian Albert left?

10 A Can you repeat that again?

11 A Sure.

12 Q Brian Albert left before you, correct?

13 A Yes.

14 Q About how long before you left was it that
15 Brian Albert left?

16 A Maybe 15 minutes.

17 Q And you had some drinks at the Hillside; is
18 that correct?

19 A I did.

20 Q And do you recall what you drank that night?

21 A Usually what I drank all the time: Jameson and
22 ginger.

23 Q And, as far as where Mr. Albert was going,
24 what, if any, conversation did you have about that?

25 A He had told me that he was going down to the

1 Waterfall Bar & Grille, which is in Canton Center and
2 that he'd be meeting his wife and some family and maybe
3 some other people.

4 Q And were you invited to come along?

5 A Yes.

6 Q Now, the Waterfall, that's an establishment
7 you're familiar with? You've been there previous
8 times, as well?

9 A Yes.

10 Q And, with respect to this evening, so you
11 leave from the Hillside. And do you go directly to the
12 Waterfall?

13 A Yes.

14 Q If you know, about what time was it that you
15 got to the Waterfall?

16 A Again, it was dark. It could have been 9:00,
17 in the area of 9:00 o'clock.

18 Q And, when you get to the Waterfall, do you
19 recall where in relation to the Waterfall you parked
20 the Jeep at that time?

21 A No.

22 Q So you come into the Waterfall, and where do
23 you go?

24 A I went to a -- I saw Brian and his family.
25 And there was a series of high tops, and I proceeded to

1 the high tops, where they were.

2 Q Now, with respect to Brian Albert, how would
3 you describe sort of your relationship around this time
4 of January of 2022?

5 A As a good friend. He was a coworker. I had
6 been working closely with his unit. I'd say he was a
7 good friend.

8 Q And through that sort of work and your
9 friendship, were you familiar with his family, as well?

10 A Yes.

11 Q And so where you came over to the area where
12 Brian Albert was, his wife was there, correct?

13 A Yes.

14 Q And who, if anyone else, was there that you
15 were familiar with or that you knew when you came in?

16 A So it would have been Brian Albert. It would
17 have been Nicole. I believe Caitlin was there, Brian
18 -- Caitlin Albert, Brian's daughter; Chris Albert; his
19 wife, Julie. There might have been another couple.
20 Matt McCabe and Jim McCabe.

21 Q And, as far as the McCabes were concerned,
22 were you -- how familiar were you with them?

23 A Casually.

24 Q Now, at some point, you come in. You join the
25 group; is that correct?

1 A Yes.

2 Q And how would you describe sort of throughout
3 the entirety of the evening or your time at the
4 Waterfall, how would you describe sort of the mood or
5 the demeanor of the group within the bar?

6 A It was a good time.

7 Q No arguments or anything like that that you
8 observed from anybody that was present during the
9 course of the evening?

10 A No. It was a good time and there was a band.

11 Q And, if you recall, about what time was it
12 that you left?

13 A I would say right around when the band was
14 wrapping up. So it was probably closer to midnight.

15 Q Now, prior to that, at some point between the
16 time that you arrived and the time that the band is
17 wrapping up and you're preparing to leave, who, if
18 anyone else that you were familiar with, came into the
19 Waterfall?

20 A John O'Keefe and the defendant.

21 Q And just to be clear, when you're referencing
22 the defendant, what is her name?

23 A Karen Read.

24 Q And just to be clear for the record, do you
25 see Ms. Read in the courtroom today?

1 A I do.

2 Q Could you identify just as to where she is
3 seated or an article of clothing that she's wearing?

4 A She is seated between Attorneys Jackson and
5 Yannetti.

6 MR. LALLY: Your Honor, I would just ask that
7 the record reflect the identification of the
8 defendant by the witness.

9 THE COURT: It may.

10 BY MR. LALLY:

11 Q Now, with regard to Mr. O'Keefe, starting
12 there as far as how long had you known Mr. O'Keefe?

13 A Maybe a year, a little over a year.

14 Q And do you recall how it was or where it was
15 that you first met Mr. O'Keefe?

16 A I believe it was actually the Hillside.

17 Q And how often would it be that you saw
18 Mr. O'Keefe or socialized with Mr. O'Keefe?

19 A I would see him at the Hillside.

20 Q And as far as were you familiar with what
21 Mr. O'Keefe did for work?

22 A Yes.

23 Q And what were you familiar with him doing for
24 work?

25 A He was a Boston police officer.

1 Q And, with reference to Ms. Read, how long had
2 you known the defendant?

3 A It would be about the same time or as long as.

4 Q And so roughly what was your understanding
5 as far as the relationship between Mr. O'Keefe and
6 Ms. Read?

7 A They were dating.

8 Q Now, with reference to occasions, as far as
9 would there be occasions typically where you would see
10 Mr. O'Keefe without Ms. Read or you would see Ms. Read
11 without Mr. O'Keefe or were they essentially together
12 when you saw them?

13 A I would say more often than not they would be
14 together.

15 Q And did you have occasion to see them at other
16 sort of social settings outside of the Hillside?

17 A I went over the house one time before the end
18 of a Patriots game.

19 Q So if I could take you back -- let me ask you
20 this as far as how would you describe your relationship
21 with John O'Keefe?

22 A I considered him a friend.

23 Q And how would you describe your relationship
24 with Ms. Read?

25 A I considered her a friend, as well.

1 Q Now, through the course of time that you knew
2 them, did you have occasion to get their contact
3 information and have communication with each of them
4 through their phones?

5 A I had John's -- John and I had exchanged
6 telephone numbers.

7 Q And, with reference to those communications,
8 were they texts? Were they phone calls or varied?

9 A Oh, they would be texts.

10 Q And, as far as the text communications that
11 you had, you received his contact information. You
12 texted and someone replied. How did you know that that
13 was John O'Keefe that was replying to you?

14 A Well, I had him saved in my phone: John
15 O'Keefe. I don't know exactly where he gave me his
16 phone number, but I knew it was him.

17 Q Now, on that evening, taking you back to the
18 Waterfall on January 28th into January 29th, do you
19 know about what time it was that Mr. O'Keefe and the
20 defendant came into the Waterfall?

21 A It would have been, I think, between like
22 11:00 and closing.

23 Q And do you recall sort of where you were
24 situated in reference to the table when they came in?

25 A So I think I was at the high top bar area, the

1 high top in the bar area, closest to the bar.

2 Q And, when Mr. O'Keefe and Ms. Read came into
3 the Waterfall, what, if anything, did you observe?
4 Where did they go when they first came in?

5 A So when they first came in, I believe they may
6 have initially went and like veered off in different
7 directions. I recall that she opened her coat and took
8 a drink out of it. I should say a glass.

9 Q And what, if any, observations did you make of
10 the glass that Ms. Read took out of her coat?

11 A It was a tall glass. It looked like a clear
12 liquid in there.

13 Q And, at some point, did you come to find out
14 where Mr. O'Keefe and Ms. Read had been prior to coming
15 to the Waterfall?

16 MR. JACKSON: Objection.

17 THE COURT: Sustained.

18 MR. LALLY: Sure.

19 BY MR. LALLY:

20 Q Are you familiar with another establishment in
21 Canton called C.F. McCarthy's?

22 A Yes.

23 Q And is that a place that you've been to
24 before?

25 A Yes.

1 Q Now, as far as the glass that you saw with
2 reference to the Waterfall and/or C.F. McCarthy's,
3 what, if any, observations did you make of it?

4 A Well, that it wasn't from the Waterfall.

5 Q And what makes you say that?

6 A Well, she walked in with it and took it out of
7 her coat. But it wasn't consistent with the type of
8 glasses that the Waterfall had.

9 Q And so -- let me just ask one further question
10 in regard to that.

11 So when you say it wasn't consistent, what was
12 it about it that made it inconsistent with glasses from
13 the Waterfall?

14 A I believe it was a tall glass and kind of like
15 bubbles on the side of it, so to speak, the design.

16 Q Now, after you make those observations, at
17 some point over the course of the time that you were at
18 the Waterfall and they were there, as well, did you
19 have occasion to have a conversation with Mr. O'Keefe?

20 A I did. I don't know if it was initially when
21 he first came in, but I did have a brief conversation
22 with him. As to the content, I don't recall what that
23 was.

24 Q Just small talk, fair to say?

25 A Greetings.

1 Q And, with regard to Ms. Read during your time
2 at the Waterfall, what, if any, conversation did you
3 have with her?

4 A I did not have any.

5 Q Now, at this point in time on this date, did
6 you have Ms. Read's cell phone information?

7 A I did not.

8 Q At the time that you were at the Waterfall?

9 A No.

10 Q Do you recall sending a text or --

11 A Oh, I'm sorry. Can you repeat that question
12 again?

13 Q Sure. I know. We've jumped around a couple
14 of days. But, at this time that you're at the
15 Waterfall on the 28th or the 29th, did you have
16 Ms. Read's contact information?

17 A Yes, I did.

18 Q And, at some point over the course of the
19 evening while you were at the Waterfall, did you send a
20 text to Ms. Read?

21 A I did.

22 Q And do you recall what the substance of that
23 text was?

24 A I think it was something like, um, well.

25 Q And do you recall what you meant as far as

1 that text message or why you had sent that to her?

2 A To be honest with you, I guess you could view
3 it as a flirty text.

4 Q Now, around midnight or so when you leave the
5 Waterfall -- I'm sorry. Let me take it back just one
6 step.

7 At some point over the course of the evening
8 while you're at the Waterfall, what, if any, discussion
9 is there around the table as far as next steps or where
10 to go from there?

11 A Well, there was talk at the table I think
12 initially about going back to Chris Albert's pizza shop
13 to have some food and drink. And, at some point, that
14 transitioned into going back to Brian Albert's house.

15 Q And, as far as the invitation to go back to
16 Brian Albert's house, was that something that was
17 extended to the entirety of the table?

18 A I took it as an open invitation to the people
19 that were together at the table, yes.

20 Q And, Mr. Albert's house, is that somewhere
21 that you had been to before?

22 A I had been there at the twins' graduation
23 party which was outside in the backyard. And I think I
24 may have dropped him off on one occasion. I may have
25 dropped something in his mailbox. But those would be

1 the only other times.

2 Q And are you familiar, at least now, with the
3 address and sort of where you were going? Did you know
4 where you were going that night?

5 A I knew where I was going, yes.

6 Q And the address was 34 Fairview Road; is that
7 correct?

8 A That is correct, yes.

9 Q And about what time, about midnight or so when
10 you're leaving, who, if anyone, was leaving the bar
11 around the same time?

12 A I mean, I think pretty much everybody was
13 wrapping up and leaving. I know that I beat Brian and
14 Nicole back to the house.

15 Q Now, as far as the time at the Waterfall with
16 reference to either Mr. O'Keefe or Ms. Read, what, if
17 any, observations did you make in regard to what they
18 were drinking that night?

19 A I think John was having beers, his typical
20 what I would see him with. And the defendant had, you
21 know, glasses.

22 Q And do you recall her ever at any point that
23 you were there, if you recall, drinking out of a glass
24 different than the one she took out of her coat when
25 she first arrived?

1 A I don't recall.

2 Q Now, you drove from the Waterfall to Fairview
3 Road. How long a drive is that?

4 A Probably a few minutes, but the weather was --
5 you know, I remember when I came out I put the wipers
6 on. There was some snow on the ground, but it was the
7 type of snow where the roadway was still black at the
8 time because it was being driven on. But the sidewalk
9 had a light coating.

10 Q And you drive over to the home. And you
11 mentioned that you beat Mr. Albert there; is that
12 correct?

13 A I did.

14 Q And so with regard to the home when you get
15 there, what did you do when you got there?

16 A Well, I was kind of being a smart-ass. I
17 dropped the plow and I did a little sweep of the
18 driveway. And then I got out of the driveway because I
19 didn't want to get blocked in, and I parked.

20 Q And do you recall where you parked in relation
21 to the house?

22 A I do. By the mailbox.

23 MR. LALLY: Your Honor, with the Court's
24 permission, if I could publish what's been marked
25 as Exhibit 72?

1 THE COURT: Okay.

2 BY MR. LALLY:

3 Q And, Mr. Higgins, do you recognize what's on
4 the screen there?

5 A I do.

6 Q And what do you recognize that to be?

7 A 34 Fairview.

8 MR. LALLY: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. LALLY:

11 Q Mr. Higgins, I'm handing you a laser pointer.
12 Just press that button there.

13 So, Mr. Higgins, with that laser pointer now
14 in your hand, if you could direct the jury's attention
15 to, if you see it in this photograph, where you parked
16 your Jeep at?

17 A So the back end of the Jeep would have been
18 right around the mailbox, itself. And the edge of the
19 driveway is right there. I wanted to make sure that I
20 was not blocking the driveway or blocked in.

21 Q And so the front of your vehicle would have
22 been pointing in which direction?

23 A I believe that would be going towards Chapman
24 Street.

25 Q And so which part of your vehicle was the

1 closest to the house? The driver's side or the
2 passenger's side?

3 A So the passenger's side would be the closest
4 to the house.

5 Q So you're parking along the front of the house
6 with traffic, correct?

7 A Yes.

8 Q So you arrive at the house. You do as far as
9 the maneuver with the plow in the driveway, and then
10 you park the vehicle. And where is it that you go from
11 there?

12 A Into the house.

13 Q And, when you get into the house, who, if
14 anyone, is there or who, if anyone, is coming in with
15 you?

16 A So I might have been there -- well, it was
17 about the same time that Brian and Nicole showed up. I
18 don't know if they entered before me or I entered after
19 them. I entered the house. What I recollect is that
20 Brian Albert, Jr. is sitting kind of at the island or
21 in the island area. And I believe he was flanked by at
22 least one female, possibly two, one on each side.

23 Q And either of those females, did you know
24 them? Did you recognize them? Did you know who they
25 were?

1 A I may have recognized one I seen before, but I
2 didn't know them.

3 Q And just lastly before we go back into the
4 house, when you park, when you do the sort of plowing
5 in the driveway and then parking, did you see
6 Mr. Albert arrive at the house around that time?

7 A When I parked the Jeep?

8 Q Yes.

9 A Yes. So I made the sweep. And, as I could
10 see the vehicle coming up, I made the sweep, got out of
11 the way so he could park.

12 Q So he had parked in the driveway around the
13 time that you're parking on the street?

14 A Yes.

15 Q And so when you come in the house and you see
16 the people that you've described, where were they
17 situated within the house?

18 A So I came through what I would call like a
19 breezeway door. So there is a front door to the
20 residence. There's the garages. And in between there
21 is like a breezeway door. I came in through there and
22 it's kind of like you're in the kitchen. I think
23 there's like an island, so to speak. You may be able
24 to sit at it. And they were -- Brian Albert, Jr. was
25 right there and, again, flanked by one, if not two,

1 females.

2 Q Now, at some point after your arrival, who, if
3 anyone else, that you were familiar with came by the
4 house?

5 A I believe it was Jen and Matt McCabe.

6 Q And do you know about how long it was after
7 you arrived that they arrived?

8 A No. I don't -- I mean, I don't think it was
9 much longer. People started, you know, to float in at
10 that point.

11 Q And, beyond the sort of kitchen area that you
12 were describing before, where else did you go within
13 the house that night?

14 A At one point briefly, Brian Albert showed me
15 some photographs of family. I believe primarily it
16 might have been of his son, who had recently been in
17 the Marine Corps, gone into, I should say.

18 Q And do you recall or why was he showing you
19 specifically like those photographs of his son in the
20 Marine Corps?

21 A Because he's proud.

22 Q Now, let me ask you this: As far as yourself
23 and/or Mr. Albert, what, if any, familiarity or what,
24 if any, background do you or Mr. Albert have with
25 regard to the military?

1 A I was in the Marine Corps. I was in the Army.

2 Q Now, this period that you're talking about in
3 the other room, about how long a period was that?

4 A It was brief.

5 Q And beyond yourself and Mr. Albert, was there
6 anyone else from the group that you described that was
7 in the room at the same time as you and Mr. Albert?

8 A I don't think so. I think Nicole may have
9 popped in for a second, but I'm not 100 percent
10 positive on that.

11 Q And, as far as do you know approximately what
12 time you left the house on Fairview that evening?

13 A I'd guesstimate it was anywhere between 12:30
14 and 1:00 o'clock, but I'm not 100 percent positive.

15 Q So a relatively short period of time; is that
16 correct?

17 A It was a short period of time. I knew kind of
18 from the onset when I got in there it probably wasn't
19 going to be a long time because I'm not a beer drinker,
20 and that's what they had. So I was probably one of the
21 first people to leave.

22 Q Now, for that entirety of the time that you
23 were there, did you go anywhere else within the home
24 beyond what you've described as far as the kitchen and
25 the living room?

1 A No.

2 Q Did you go upstairs at any time?

3 A No.

4 Q Did you go downstairs in any sort of basement
5 area at any time?

6 A No.

7 Q And, when you exited the home, do you recall
8 which of the two doors that you've described that you
9 would have exited from?

10 A The same door I came in. The breezeway.

11 Q Now, during the time that you were there,
12 similar to what I asked about the Waterfall, how would
13 you describe sort of the mood or the demeanor within
14 the home?

15 A It was fine. I mean, everybody was happy.

16 Q At any point in time while you were at 34
17 Fairview, do you -- any of the people that were in the
18 house, do you recall seeing them go outside of the
19 house and come back or anything like that?

20 A Not -- I can't say definitively I saw anybody
21 come in or out of the house, but I think somebody might
22 have been in the process of maybe being picked up.

23 Q And not anybody that you were super familiar
24 with; is that fair to say?

25 A I think it was one of the females.

1 Q Now, with respect to the front of the house,
2 at any point in time that you were inside of the house,
3 was your attention drawn or did you look out the
4 windows or the door or anything like that?

5 A No.

6 Q And, when you were in the kitchen area, do you
7 recall sort of how you were positioned in relation to
8 the windows facing the front of the house?

9 A So I would have had my back to that area, my
10 back to the door that we came in.

11 Q And specifically with reference to Mr. O'Keefe
12 and Ms. Read, at any point in time, did you see either
13 of them inside the house or outside of the house or
14 around the house or anywhere around 34 Fairview Road?

15 A Absolutely not, no.

16 Q And, at any point in time over the course of
17 the evening, what, if any, communication or text or
18 anything did you send to either of those two people
19 while you were at the house on Fairview?

20 A While I was at the house I think I shot a text
21 just to John, where are you. I think that's what it
22 was.

23 Q And, if you recall, did you ever get a
24 responses to that text?

25 A No. There was no response.

1 Q So after you left the Waterfall, when you left
2 the Waterfall, was Mr. O'Keefe and Ms. Read, the
3 defendant, still there?

4 A I can't say 100 percent, no.

5 Q But, after you left the Waterfall, at any
6 point in time did you speak to, text with or
7 communicate in any way, shape or form or see in any
8 way, shape or form either Mr. O'Keefe or Ms. Read?

9 A Well, again, the only person I shot the text
10 to while I was at the house was John. But, after I
11 left the Waterfall, I never saw John O'Keefe or the
12 defendant again.

13 Q Now, when you left from the residence -- and,
14 again, you're not sure what time that was?

15 A Between 12:30 and 1:00 o'clock.

16 Q And do you recall who amongst the group was
17 still at the house at the time you left?

18 A I think I was probably the first person to
19 leave.

20 Q So all of the other people that you've
21 described would have still been in the house when you
22 exited from the house?

23 A Yes.

24 Q Now, you indicated earlier that you're
25 familiar with Mr. Albert and his family to some extent;

1 is that correct?

2 A Yes.

3 Q You've been to his house for a graduation
4 party for his twins, correct?

5 A Yes.

6 Q Through that, at any point in time prior to
7 this date, did you become aware or familiar with
8 Brian Albert's nephew, Colin Albert?

9 A I know the name and I know that he is one of
10 the sons of Chris Albert.

11 Q Are you familiar with what he looks like?

12 A If he walked in here right now, I wouldn't
13 know.

14 Q You would not know?

15 A No.

16 Q And, beyond the people that you've described
17 as far as seeing at 34 Fairview Road, fair to say you
18 don't recall anybody being introduced or identified as
19 Colin Albert?

20 A No.

21 Q Now, you exit from the home through the
22 breezeway door and go over to your vehicle; is that
23 right?

24 A Yes.

25 Q And, from the time that you had entered the

1 home to the time now that you're exiting from the home,
2 what, if any, change did you note as far as the weather
3 intermittently?

4 A Just that the weather was getting worse. The
5 snow was picking up.

6 Q And, as far as the accumulation that you had
7 described before as far as you could still see the
8 blacktop and all of that when you left the Waterfall,
9 what was it like when you came out of the house?

10 A Again, I think that the streets that weren't
11 being traveled, there was snow on them. There was
12 coverage.

13 Q And, as far as the front lawn area of the
14 house at 34 Fairview Road, what, if any, observations
15 did you make of that?

16 A Can you rephrase that?

17 Q Sure. As far as the snow was concerned --

18 A Yes.

19 Q -- was the snow sticking to or was it
20 accumulating on the lawn, as well?

21 A I believe so. I mean, when I walked from the
22 breezeway to the Jeep, there was snow on the ground.

23 Q Now, the front yard area of the house, is that
24 something that you were looking at with any
25 particularity or taking note of as you were walking to

1 your Jeep down the driveway?

2 A No. It was a long day. We had been on the
3 road. I just was looking to get home.

4 Q And so when you get to your Jeep, can you
5 describe to the jury sort of how it was that that you
6 pulled away or what, if anything, you recall about that
7 process?

8 A So I got in the Jeep, you know, started it up.
9 I may have looked at my phone, put it in drive and
10 started to pull away. And I'm like, put the plow up.
11 So I reached -- you know, I moved a couple of feet. I
12 heard it grinding on the ground, reached for the device
13 called the fishstick, picked it up, lifted the plow and
14 then drove away.

15 Q And the plow that you had affixed to the front
16 of the Jeep, how was -- I think you've talked a little
17 about it. But how was that sort of controlled and who
18 controls that?

19 A So the operator controls it. The mechanism to
20 control it, again, is called a fishstick. It's on a
21 cord and it plugs in under the dashboard. You know, I
22 reached down to find out -- I don't know if it was on
23 the floor or between the seats, but it's not like a
24 joystick that's attached actually to the dashboard.

25 Q So some sort of hydraulic system; is that

1 correct?

2 A Yeah. It's a hydraulic base.

3 Q Now, in addition to moving it sort of up and
4 down, is there any other way that you can manipulate
5 the blade as far as that switch is concerned?

6 A Yes. So I would generally, if I'm driving
7 around town and not worrying about the vehicle heating
8 up, I'd just lift the plow off, a couple of feet off
9 the ground. If I was on the highway, I would tilt it
10 to get airflow.

11 Q And, as far as height is concerned for that
12 plow, if you were to lift it all the way to the top,
13 what, if any, impact would that have with reference to
14 your line of sight or visibility through the
15 windshield?

16 A Zero.

17 Q So even if it's raised all the way as far as
18 it can go, you can still see over the top of the blade?

19 A Yeah. If it comes even with the hood of the
20 Jeep, I'd be surprised.

21 Q So you pulled forward a couple of feet and
22 then you lift it. About how high did you lift it when
23 you stop and then lift up?

24 A Probably like a foot or two.

25 Q And, as far as following that, you pull away

1 from the house; is that right?

2 A Correct.

3 Q And, as you're pulling away from the house,
4 where is your attention drawn or what, if anything, did
5 you see as far as when you're pulling away from the
6 house?

7 A I wasn't drawn to anything. I just drove
8 away.

9 Q And, when you drove away, again, during that
10 process, did you see anything outside of the house that
11 drew concern or your attention or anything like that?

12 A No.

13 Q Now, as far as when you get out to your
14 vehicle and you're driving away, were there any other
15 vehicles on the street that you saw in the area of the
16 residence at 34 Fairview?

17 A I didn't see any.

18 Q And do you recall whether or not there were
19 any tire tracks in the snow or anything that you saw
20 when you came out to the vehicle, if you recall?

21 A I do not recall.

22 Q Now, you leave the residence at 34 Fairview,
23 and where did you go from there?

24 A I went back to the Canton Police.

25 Q And why was it that you went back to the

1 Canton Police Station?

2 A Well, we had traveled down for the services
3 for those police officers, and we anticipated staying
4 the following day. I think I had said that we left the
5 day earlier. So I had left a key to the surveillance
6 vehicle on top of my desk so that somebody could move
7 the vehicle because some of -- a lot of times,
8 Chief Berkowitz would get after me. As a courtesy, I
9 was parking vehicles there, sometimes my personal but
10 primarily my work vehicles. One thing he asked me,
11 just leave the vehicles in the middle of the parking
12 lot so that snow could be cleared. So the reason for
13 heading back there was to move those vehicles because
14 if I didn't do it then, I would have had to get up
15 early and do it. And I also know that they plow
16 through the night. So that would be the reason for
17 heading back.

18 Q Before we get a little more into that, as far
19 as the funeral that you went to, are these people that
20 you knew or had met or were familiar with?

21 A No.

22 Q So you get back to the police station. And,
23 with regard to the Canton Police Station, what, if any,
24 access did you have to the Canton P.D. and sort of how
25 did you facilitate that?

1 A So I would describe it as a proxy card. The
2 doors have card readers. Generally in the parking lot
3 when you come into the police station, you drive in.
4 Sally ports are off to your right-hand side. There's
5 two bay doors there. There is a pass-through door.
6 And then over in the corner is typically where I would
7 bury both vehicles.

8 So if I was -- typically it would be my take-
9 home pickup truck that I described earlier, and it
10 would be the surveillance vehicle. But, if I had --
11 that could be swapped out with one of my personal
12 vehicles. I would leave a personal vehicle there if I
13 took one of those two vehicles.

14 And then for me to access into the building,
15 the most direct door would be that pass-through door by
16 the sally port.

17 Q And so that back area, is that typically where
18 you would park?

19 A Yes.

20 Q And, just in reference to the -- you talked
21 about a surveillance vehicle. That's something that
22 you use as far as conducting surveillance in the
23 performance of your duties as a law enforcement
24 officer?

25 A Yes.

1 Q And so fair to say that would not be something
2 that you would want to park like say in front of the
3 police station?

4 A No.

5 Q Now, that path that you took, is that the
6 typical path that you would take sort of parked to the
7 back and then cut through the sally port, into the
8 station?

9 A Yes. I mean, that would be the route that I
10 would go.

11 Q And, if you recall, is that the route that you
12 went on that particular early morning when you came
13 back to the station?

14 A I believe it is.

15 Q And, when you come back to the station and you
16 go in, where are you going within the police station
17 when you enter?

18 A So I was going up to my office to grab the
19 key for that surveillance vehicle. So when you come
20 through that pass-through door at the sally port, the
21 first door would be through the booking and the holding
22 area. Then it directly goes through the dispatch area.
23 But, if you walk to the extreme other end, there is
24 another door on the other end, common hallway, walk
25 down that hallway, hit a set of stairs. And I would go

1 up that way.

2 Q Now, if I can take you back just for a second
3 as far as when you initially walk into the sally port
4 area, that is a garage, basically, correct?

5 A Yes.

6 Q And, when you come into the garage, the door
7 that you would then enter to come into the station,
8 where is that in relation to the door that you come
9 from the exterior? How far away are the two?

10 A So if you come into -- I guess what you're
11 asking, so if I come into the sally port, immediately
12 to the right there is the door that goes into the
13 holding area/booking area. And then probably five or
14 -- I mean, it's probably 12 feet long to get to the
15 other door.

16 Q So from where you're parking and where you
17 come into the sally port, it's not like you then have
18 to walk across the garage or anything like that to get
19 to the door into the station; is that correct?

20 A Well, you do walk across the garage, but it's
21 small.

22 Q And, when you say "small," about how far if
23 you know?

24 A About 12 feet maybe.

25 Q And so you come into the station. You go by

1 the dispatch; is that correct?

2 A So as I'm walking down the hallway, dispatch
3 would be off to the right. It's a wooden door with two
4 glass panes.

5 Q And, as far as the Canton Police Station is
6 concerned, are you familiar with or were you aware at
7 the time that there is sort of security and cameras and
8 such around the station?

9 A Yes.

10 Q You're aware that those cameras record, is
11 that correct?

12 A Yes.

13 Q And are you aware of any records that are
14 generated as far as your keycard access when you go
15 through a certain door at a certain time?

16 A Well, I've never seen those records, but it's
17 my understanding it tracks access, access control.

18 Q Okay. And did you happen to go by the
19 dispatch area specifically and, if so, do you know who
20 was working there that night?

21 A Newly promoted Sergeant Goode, I believe,
22 probably. He was on midnights.

23 Q Do you have any specific recollection of
24 seeing him there that evening or that early morning
25 when you came by?

1 A I believe I waved to him.

2 Q And, as far as when you get to the police
3 station, do you have any -- how far a drive is it from
4 Fairview to the police station, if you know?

5 A Well, I mean, the weather was picking up. So
6 it probably took me a little bit longer to get back.
7 But it's probably five, 10 minutes, maybe.

8 Q Now, you went to your office to get a key,
9 correct?

10 A Yes.

11 Q And why had you left the key to one of the
12 vehicles in the office?

13 A So as I stated earlier, I anticipated not even
14 being back in Massachusetts, knew the storm was coming,
15 didn't know how bad it was. But I left the key on the
16 desk to facilitate somebody being able to move that.

17 Q And so you go to your office. You get the
18 key. And then where did you go from there?

19 A I go back downstairs, and I move the vehicles
20 to the center of the parking lot.

21 Q And then at some point, you leave; is that
22 correct?

23 A Yes.

24 Q And do you know about how long it was after
25 you moved the vehicles around that you left Canton

1 P.D.?

2 A Not long, but I'd be guessing if I gave you a
3 time.

4 Q And so where did you go from there?

5 A I went back to West Roxbury.

6 Q And which -- the vehicles that you've
7 described, which of those vehicles did you use to get
8 from Canton P.D. to West Roxbury?

9 A The Jeep Cherokee -- Jeep Wrangler. Sorry.

10 Q And, if you know, about what time was it that
11 you got home to West Roxbury?

12 A It could have been somewhere around twenty of
13 two. I'm not 100 percent positive.

14 Q So sometimes between 1:30 and 2:00? Is that
15 roughly around --

16 A Yes.

17 Q Okay. And, when you get home, do you recall
18 like what it was that you did when you got home?

19 A Well, again, it was a long day. We had
20 traveled. The traffic. It just seemed like it dragged
21 on forever. But I think I did what I typically do
22 after being out, having a couple of drinks. I had
23 something else to eat, and I believe I might have had
24 another couple of drinks and either laid on the couch
25 or laid on my bed. Typically, I would fall asleep if I

1 was on the couch and wake up and go into the bedroom.

2 I don't know what location I was in at that point.

3 Q Now, after you fall asleep, at some point
4 later on that morning or something, you wake up,
5 obviously, at some period, correct?

6 A Yes.

7 Q And do you recall what it was that woke you on
8 that morning?

9 A I mean, for lack of better words, my phone,
10 both my work and my personal phones, were blowing up.
11 They were going off.

12 Q And, if you know, about what time in the
13 morning was that that, that occurred?

14 A Probably around 6:30-ish.

15 Q And who, if anyone, you know, as far as you
16 look at your phones, who, if anyone, was blowing up
17 your phone or who was calling you at that point?

18 A Well, I think first it was Chief Berkowitz and
19 then Brian Albert.

20 Q And you mentioned first it was Chief
21 Berkowitz. Did you answer the chief's call at that
22 time?

23 A No.

24 Q And was that abnormal for the chief to be
25 calling you at that time of day?

1 A No. I mean, he's an early riser. And
2 typically when he was working -- you know, again, we
3 also had a friendship. You know, he would call in the
4 morning, kind of like checking in with each other. So
5 I was just kind of like why are you calling me this
6 early, kind of just blew it off.

7 But then when I saw Brian Albert calling me,
8 like that kind of caused me some concern because I'm
9 like, why is he calling me? He was out with me all day
10 yesterday. We both had the same long day, and I was
11 concerned at that point.

12 Q And so you answer the phone from Mr. Albert;
13 is that correct?

14 A Yes.

15 Q And what, if anything, did you learn from him
16 or what, if anything, did he tell you?

17 MR. JACKSON: Objection.

18 THE COURT: I'm going to sustain the
19 objection.

20 BY MR. LALLY:

21 Q So you receive a call from him, and you have
22 some sort of conversation, correct?

23 A Yes.

24 Q Now, prior to that from the time that you
25 got home to the time that you answer this call from

1 Brian Albert, do you recall having any phone calls or
2 conversations with anybody during that time period?

3 A No.

4 Q And, specifically, did you talk to
5 Brian Albert on the phone at any point between the time
6 you left his home and the time that you woke up the
7 next morning to his phone call?

8 A No, I did not.

9 Q Now, the previous day, over the course of it,
10 you know, through waking up in New York and then
11 driving home and going to the Hillside and going to the
12 Waterfall and going to Mr. Albert's house, had you and
13 Mr. Albert communicated via cell phone, whether it be
14 text or phone call, at any point in time during the
15 course of that day?

16 A You mean the day before?

17 Q Yes.

18 A Yes.

19 Q So he was fairly recent in your contacts; is
20 that correct?

21 A Yes.

22 Q And so as far as that phone call that you
23 received from Mr. Albert, based on whatever information
24 that you learned from that, what did you do then?

25 A I got dressed and went right over to the house

1 at 34 Fairview.

2 Q And, when you left your house in West Roxbury
3 and went back to 34 Fairview, what were you driving at
4 that point?

5 A I was still in the Jeep Wrangler.

6 Q And, if you know, about what time or so was it
7 that you arrived back at 34 Fairview late that morning?

8 A Maybe a little after 7:00.

9 Q And, when you arrived there, what, if
10 anything, did you see?

11 A I mean, I just went into the house.

12 Q As far as outside of the house when you
13 arrived there, what, if anything, did you see outside
14 the house?

15 A I don't recall. Maybe a police car. I don't
16 remember.

17 Q Now, with regard to -- starting with the
18 weather, when you woke up and you were driving back to
19 34 Fairview, what was the weather like at that point in
20 reference to when you had gotten home to West Roxbury
21 the night before?

22 A It was real bad.

23 Q And, as far as when you get to the house at 34
24 Fairview sometime around 7:00 a.m. or so, where is it
25 that you parked in relation to the home at that point?

1 A I might have went in the driveway. I don't
2 remember specifically where I parked.

3 Q And, as far as other vehicles there, how many
4 other vehicles -- were there more or less vehicles
5 there that morning than there were when you were there
6 the night before?

7 A I couldn't say definitively.

8 Q And, when you come into the house, who, if
9 anyone, is it that you see inside the house when you
10 get there?

11 A So I saw Brian. I saw Nicole. Brian, Jr. may
12 have popped in and out of the same kitchen area that I
13 was in before. Jen and Matt McCabe. And then a short
14 time later, Julie Albert showed up.

15 Q And Julie Albert, when she showed up, what, if
16 anything, did you observe her to have with her when she
17 showed up?

18 A Like a box of donuts or muffins or something
19 like that.

20 Q And, as far as the house when you come in,
21 similar to the evening before, but how would you
22 describe sort of the mood and the demeanor of the
23 people in the house when you arrived there later on
24 that morning sometime around 7:00 or so?

25 A The people were pretty distraught.

1 Q And did you know why they were distraught?

2 A Because John had been found on the lawn.

3 Q And is that why you had gone to the house?

4 A Yes.

5 Q And, when you received that information or
6 were informed of that, how did you receive that
7 information or what, if any, impact did that have on
8 you?

9 MR. JACKSON: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. LALLY:

12 Q When did you first learn of Mr. O'Keefe being
13 found on the lawn at 34 Fairview?

14 A During the phone call at about 6:30-ish when
15 Brian Albert -- when I spoke with him.

16 Q And what was your reaction when you received
17 that information?

18 A It didn't make sense to me. I couldn't do the
19 math in my head because I know John O'Keefe and the
20 defendant never -- they never showed up. It didn't
21 make sense.

22 Q So from this time that you're in the house, do
23 you recall any sort of conversation within the group as
24 far as what was going on?

25 MR. JACKSON: Objection.

1 THE COURT: Just do you recall that there was
2 a conversation?

3 THE WITNESS: Yes. I recall that there was
4 conversation and --

5 MR. JACKSON: Objection.

6 THE COURT: Just that. Next question,
7 Mr. Lally.

8 MR. LALLY: Sure.

9 BY MR. LALLY:

10 Q Now, from the time that you arrived there
11 later on that morning, about how long a period of time
12 were you there for?

13 A Less than an hour.

14 Q And from there, where did you go from there?

15 A I don't know if I went back to the police
16 station or if I went to West Roxbury. It might have
17 been the police station.

18 Q And, if you went to the police station, why
19 would you have gone to the police station at that
20 point?

21 A Because I was still trying to put things
22 together in my head. I was upset. Those would be the
23 reasons.

24 Q Do you recall whether or not you were at the
25 police station that day?

1 A Yes. I --

2 MR. JACKSON: Objection.

3 THE COURT: I'll allow it.

4 THE WITNESS: Yes. I'm pretty sure I was
5 there.

6 BY MR. LALLY:

7 Q And do you know about how long you were there
8 or about what time it was that you were there?

9 A No. I couldn't say specifically.

10 Q And, after you left the police station that
11 day, where did you go from there?

12 A At some point, I probably went back to West
13 Roxbury. I don't specifically remember.

14 Q Now, again, from when you went -- I'll give
15 you a fairly simple question, but as far as you drove
16 the Jeep Wrangler from West Roxbury back to Fairview
17 Road that morning, correct?

18 A Yes.

19 Q And then you drove that Jeep Wrangler from
20 Fairview Road to the Canton Police Station at some
21 point during the day?

22 A I believe I was in that vehicle all day.

23 Q Now, at some point a few days following this,
24 did you have occasion to meet with some troopers from
25 the state police?

1 A I did.

2 Q And do you recall who those troopers were?

3 A Trooper Proctor and Trooper Bukhenik.

4 Q And were you familiar with those troopers
5 prior to that date that you met with them?

6 A So I was familiar with Trooper Bukhenik.
7 Evidently, I was reminded by Trooper Proctor that I had
8 met him before. I think I helped him on a gun recovery
9 that he made, but I didn't remember him.

10 Q And, as far as you mentioned, you know, sort
11 of socializing with other officers from law
12 enforcement, had you ever socialized with either
13 Sergeant Bukhenik or Trooper Proctor before?

14 A So Trooper Proctor, no. I had seen Trooper
15 Bukhenik on a number of occasions at a local gym. I
16 had seen him one time at the Hillside. I think he
17 might have been with his child after a sporting event.
18 I think I -- I said "hello." I bought him a drink.
19 But I wouldn't classify that as socializing. More
20 being friendly.

21 But I also -- that area of responsibility, the
22 South Shore, south of Boston, Cape and Islands, I was
23 assigned to a group where I would interface with people
24 in that area. And that Norfolk CPAC office would be
25 people that over the years I've probably dealt with.

1 Q Now, when you met with him on this day, do you
2 recall specifically what day it was?

3 A No.

4 Q If I said February 3rd, would that sound about
5 right, or if you know?

6 A I would say in that area.

7 Q And, when you met with them, you had a
8 conversation with them or an interview in regard to
9 what had transpired on the 28th and 29th, correct?

10 A Yes.

11 Q And, following sort of the substance of that
12 interview, what, if anything did you provide the
13 troopers with?

14 A I provided them with text messages that I had
15 exchanged and had on my phone with John O'Keefe and
16 text messages that I had exchanged with the defendant.

17 Q And how did you -- in what sort of format did
18 you provide those text messages to the troopers?

19 A Well, they were copies. And I believe that
20 the format would be, the way to categorize it,
21 screenshots.

22 Q And how is it that you sort of generated these
23 from your phone?

24 A I consulted a coworker, who is also a friend.
25 And he was able -- he has the training with the cell

1 phones. I told him I wanted to provide these to the
2 state police, you know, what is the best way that I can
3 get them off my phone and provide them to law
4 enforcement.

5 Q And why was it that you felt it was important
6 or why is it that you wanted to share those with the
7 troopers?

8 A I thought it was important because I've had
9 communications with the both of them. And I wanted to
10 be fully transparent.

11 Q Now, with reference to either or both of those
12 communications with Mr. O'Keefe and Ms. Read, the
13 material that you provided to the troopers, what, if
14 anything, did you do to that material before giving it
15 to them?

16 A Nothing.

17 Q So as far as the material or the texts that
18 you provided to the troopers, that was what was on your
19 phone?

20 A Yes.

21 Q So there were no deletions, no excising any
22 material? Nothing like that before you gave it to the
23 troopers?

24 A No. Exactly what was on my phone I provided
25 to them.

1 Q And specifically as you were providing it to
2 them or shortly thereafter, did you have a conversation
3 with Sergeant Bukhenik in reference to that very topic
4 if you recall?

5 A No. I don't recall.

6 Q Do you recall him asking you anything about as
7 far as if this was the entirety of what you had
8 provided?

9 A Oh, he -- so I think during the actual
10 interview he specifically asked me are these -- I would
11 say, in sum and substance, he said, you know, is this
12 an accurate representation? Has anything been deleted?
13 And I said, no. I mean, with respect to the texts with
14 the defendant from the first time that she reached out
15 to me and texted me, nothing had been deleted. As far
16 as John's text string, we might have had older text
17 strings that were deleted. But that was -- what I gave
18 him, what I gave the troopers, was exactly -- when I
19 captured everything it exactly -- it is what it is.
20 Everything that was on those phones was provided.
21 Nothing was deleted.

22 Q And, as far as when you provided these text
23 communications to the troopers, was that something that
24 they had asked for or was that something that you
25 volunteered?

1 A I volunteered that to them.

2 Q And, upon them sort of receiving them from
3 you, did they have further questions beyond what they
4 had already asked you based on what you provided?

5 A I believe they got into other specific
6 questions specifically in relation to John O'Keefe and
7 the defendant as far as intimacy and things like that.
8 There was more detailed questions that followed.

9 MR. LALLY: Your Honor, may I approach the
10 witness?

11 THE COURT: Yes.

12 BY MR. LALLY:

13 Q I'm going to show you two documents. One is
14 12 pages long and one is 56 pages long. If you could
15 just look at those briefly and familiarize yourself
16 with them and look up when you've completed.

17 Do you recognize what those are?

18 A Yes.

19 Q What do you recognize those to be?

20 A So those are what -- those are the two
21 documents that I provided to the troopers during the
22 interview.

23 Q And the shorter one, who, if anyone, is those
24 communications with?

25 A John O'Keefe.

1 Q And the longer one, the 56 pages long or so,
2 who, if anyone, are those communications with?

3 A The defendant.

4 MR. LALLY: May I approach, Your Honor?

5 THE COURT: Yes.

6 MR. LALLY: I am going to seek to introduce
7 these as exhibits.

8 MR. JACKSON: No objection.

9 THE COURT: So we will do them separately,
10 please. The first 12-page one.

11 (Whereupon, 12 pages of texts with John O'Keefe was
12 entered and marked Exhibit No. 103 in Evidence.)

13 THE COURT REPORTER: That will be Exhibit 103.

14 (Whereupon, 56 pages of texts with Karen Read was
15 entered and marked Exhibit No. 104 in Evidence.)

16 THE COURT REPORTER: And Exhibit 104.

17 THE COURT: Thank you.

18 MR. LALLY: Your Honor, may I return both of
19 those to the witness?

20 THE COURT: Yes.

21 BY MR. LALLY:

22 Q So I'm going to direct your attention first to
23 what's been marked as Exhibit 103. Is that the
24 communications or the text communications that you had
25 with Mr. O'Keefe?

1 A Yes.

2 Q And, sir, if I could turn your attention to
3 the first sort of content within that in reference to
4 -- what is the date of the first sort of exchange in
5 these text communications between yourself and
6 Mr. O'Keefe?

7 A Wednesday, November 24th.

8 Q And, in general, can you describe for the jury
9 what that conversation was about on Wednesday, November
10 24th?

11 A He basically -- it's kind of hard to read. I
12 apologize. But it looks like he just reached out to
13 me. He said (as read), "What's up, pal? Where are we
14 going to hang local? We are going to hang local. Are
15 you drinking?"

16 Q So he's out and he's trying to see where you
17 are and if you want to meet up?

18 A Yes.

19 Q Now, sir, if I could direct your attention to
20 the last page within those documents you have before
21 you.

22 So with reference to there's some conversation
23 on the bottom of that last page from Sunday, January
24 16th; is that correct?

25 A Yes.

1 Q Okay. Now, you had mentioned that with
2 respect to Mr. O'Keefe, you had been over his house on
3 a prior occasion to watch a Patriots game, correct?

4 A Yes.

5 Q And when was that in relation to this date
6 that we've been talking about as far as the 28th, into
7 the 29th? How long before?

8 A So it was the 16th. But even the 15th, into
9 the 16th, I believe.

10 Q So that text on the 16th was either the same
11 day or the day following when you had gone over there
12 to watch the Patriots game?

13 A Well, where the -- yeah, the text where I
14 asked if I broke his nephew's toy, video game, which
15 would have been the next day.

16 Q Now, in reference to Mr. O'Keefe, you
17 described that he was a friend of yours; is that
18 correct?

19 A Yes.

20 Q Now, where you used to live in Canton, where
21 was that or how close was that in relation to where
22 Mr. O'Keefe lived on Meadows Ave.?

23 A Not far at all. Several blocks.

24 Q Now, prior to you going over there for the
25 Patriots game, at some point -- or had you been over to

1 his home at any previous time?

2 A So I reached out. We had inclement weather.
3 It might have been around the beginning of January,
4 maybe, the 6th or 7th. And I shot him a text and said,
5 do you want me to clear the driveway for you.

6 Q So using the same plow that you were talking
7 about before, you had offered to clear out his
8 driveway?

9 A Yes.

10 Q Now, on this occasion that you go over there
11 for the Patriots game, prior to that, had the two of
12 you had any conversation or had you been invited to go
13 over there with reference to football games before?

14 A Yes. A number of times at the Hillside, you
15 know, I was asked, you know, hey, we're gonna watch the
16 last half at the house. Do you want to come by?
17 Things like that, yes.

18 Q And had you ever taken Mr. O'Keefe up on any
19 of those prior invitations to come by the house and
20 watch a game?

21 A No.

22 Q So on this particular game, do you recall why
23 it was that you took him up on it this time and went
24 over?

25 A Well, I felt bad I had never been over there.

1 I'd been asked repeatedly. I knew it was probably
2 going to be the last game for the season, and I had
3 also independently got a text of an invite from John,
4 himself, and then also from the defendant
5 independently.

6 Q Now, in reference to you thinking it was going
7 to be the last game of the season, do you recall like
8 was it a regular season game, playoff game? Who were
9 they playing? Do you recall any of that?

10 A I think it might have been the Bills. I don't
11 know if it was playoffs or the -- it was just another
12 game to me. But I knew it was probably going to be the
13 last game.

14 Q And so if you recall that evening, about what
15 time was it that you stopped by Mr. O'Keefe's house?

16 A Oh, it was like just before the game ended.
17 Not long after.

18 Q So pretty far into the second half of the game
19 by the time you arrived?

20 A Oh, yeah.

21 Q And, in addition to Mr. O'Keefe, who, if
22 anyone else, was at the house when you got there?

23 A I believe Chris Curran and his wife might have
24 been there at one point. I think maybe the wife left
25 but he stayed. I believe maybe Mr. Curran -- I had

1 never met him before. I think they introduced him as
2 Mr. Curran's brother. And then John's nephew. I don't
3 know if his niece was there. She might have been in
4 the other room.

5 Q And the defendant, Ms. Read, was she there, as
6 well?

7 A Yes.

8 Q And, as far as the Currans are concerned, are
9 those people you're familiar with and how do you know
10 them?

11 A Again, the Hillside. I met them there and I
12 believe through John O'Keefe.

13 Q How well did you know them at that point?

14 A Not very well.

15 Q Now, you mentioned that John's nephew was
16 there. Had you ever met him before?

17 A No.

18 Q And what, if any, interaction did you have
19 with his nephew while you were there?

20 MR. JACKSON: Objection.

21 THE COURT: I'll allow it.

22 THE WITNESS: We were playing video games
23 together.

24 BY MR. LALLY:

25 Q So the text, if I could direct your attention

1 back to the text communications before you with
2 Mr. O'Keefe on that last page, specifically, there is a
3 texted exchange between the two of you on Sunday,
4 January 16th, correct?

5 A I see the text.

6 Q And that's about 9:30 in the morning; is that
7 correct?

8 THE COURT: Mr. Lally, on this last page,
9 which one is it? One, two or three?

10 MR. LALLY: About the middle of the page, Your
11 Honor.

12 THE COURT: Thank you.

13 THE WITNESS: Can you repeat that again?

14 MR. LALLY: Sure. Your Honor, may I approach
15 the witness?

16 THE COURT: Yes.

17 BY MR. LALLY:

18 Q It's a little difficult to read. I apologize.
19 Sir, I would direct your attention to right there where
20 it says, Sunday, January 16th. Do you see that, sir?

21 A Yes.

22 Q And that indicates about 9:33 in the morning,
23 correct?

24 A Yes. I see it.

25 Q And if you could read from that text exchange

1 and, if you know, if you could indicate sort of who's
2 talking or who's saying what?

3 A It says (as read), "TF hurting like this in 10
4 years. Haha." I'm not sure who is saying that.

5 Q You're not sure who's hurting and who is
6 saying haha?

7 A Well, I know I was definitely hurting that
8 morning. But I'm not sure who was saying that.

9 Q And what, if any, other communication is there
10 later on in the same chain?

11 A All right. I see (as read), "John, was it
12 necessary to introduce Hennessy? XO. Was I really
13 playing video games?" That would have been me. And
14 then it says (as read), "I blame Karen. Yup." And
15 then I said (as read), "Please tell me I didn't break
16 your nephew's video game. If I did, I'll replace it.
17 Did I throw a controller or some shit?" And then it
18 says (as read), "I don't think so. WTF. I'm hurting.
19 How can you guys not be? Still in bed."

20 Q Is that the end of that specific conversation?

21 A It appears to be, yes.

22 Q And then the next conversation begins on
23 what's indicated as Saturday, 12:20 a.m.; is that
24 correct?

25 A Yes.

1 Q And is it your recollection that that was
2 January 29th?

3 A Yes.

4 Q And is that the message that you sent to
5 Mr. O'Keefe while you were in the residence at 34
6 Fairview Road?

7 A Yes. I said (as read), "Are you coming here,"
8 followed by three question marks.

9 Q And, again, Mr. O'Keefe, based on your
10 recollection and based on the records you have before
11 you, never responded to that text; is that correct?

12 A That's correct.

13 Q And you never saw him after that, correct?

14 A Never again, no.

15 MR. LALLY: May I approach just to retrieve,
16 Your Honor?

17 THE COURT: Yes.

18 MR. LALLY: Your Honor, may we approach?

19 THE COURT: Yes. Jurors, feel free to stand
20 up and stretch.

21 (Whereupon, there was a sidebar conference as
22 follows:)

23 THE COURT: Wait for Mr. Jackson.

24 MR. LALLY: Sure. At this point, I would be
25 starting to get into the text communications

1 between this witness and the defendant. So I was
2 just --

3 THE COURT: So one question I have --

4 Court Order: Jurors or Juror Issues
5

6 THE COURT: All right. So we will take the
7 morning recess.

8 (Whereupon, there was a pause in the sidebar
9 conference.)

10 THE COURT: Jurors, why don't we take the
11 morning recess. This may be a little bit longer.
12 So 20 minutes to a half an hour. There are things
13 I need to look at.

14 (Whereupon, the jury exits the courtroom for a
15 brief recess at 10:29 a.m.)

16 (Whereupon, the sidebar conference continued as
17 follows:)

18 THE COURT: So one thing I want to know, can
19 Ms. Gilman --

20 MR. LALLY: Enhance those?

21 THE COURT: -- blow up these because it's so
22 much easier.

23 MR. JACKSON: We've got an entire set of
24 these. I don't know why you're not using this.
25 This is that.

1 MS. LITTLE: It was produced in discovery.

2 MR. JACKSON: It was produced in discovery.

3 What --

4 MR. YANNETTI: It's even better.

5 MR. JACKSON: That is that.

6 THE COURT REPORTER: One at a time, please.
7 I'm losing track.

8 THE COURT: Slow down.

9 MR. JACKSON: I'm sorry.

10 THE COURT: Mr. Yannetti, I'm going to hear
11 from Mr. Jackson.

12 MR. YANNETTI: Understood.

13 THE COURT: Ms. Little, the same for you.

14 MR. JACKSON: I'm so sorry.

15 THE COURT: Do you have --

16 MR. LALLY: I don't have it in that form. I
17 just have it as the Court has it. I'm sure I can
18 talk to Ms. Gilman about focusing on that.

19 MR. JACKSON: This was produced at the same
20 time that this stuff was produced by the other
21 entity.

22 MR. LALLY: This is something that he provided
23 to the troopers and we provided to you. So that's
24 what I'm saying. I have it like this. But I'm
25 sure I can ask Ms. Gilman if she can blow up this

1 and just go down that way.

2 THE COURT: So I would like to see it. I'd
3 like to see what you have up on the screen. There
4 was -- Mr. Higgins, you can step down, sir.

5 (Whereupon, the witness steps from the witness
6 stand.)

7 MR. JACKSON: May I inquire of Ms. Little one
8 quick question?

9 THE COURT: Sure. Go right ahead.

10 MR. JACKSON: I'm sorry.

11 THE COURT: No. That's fine. Why don't you
12 step aside while speaking.

13 (Whereupon, there was a discussion off the record.)

14 MR. JACKSON: Okay. That answers my question.
15 I just want to make life easier because that is
16 really easy. This is what I've been working off
17 for months. We actually got that from Mr. Lally.
18 It's on a disk that you gave us. We just
19 downloaded it. So you may not have seen it but
20 you've got it.

21 THE COURT: Was that on the disk that went to
22 the grand jury the same day Higgins went? It would
23 be like a grand jury exhibit, 11, 12, 13 or 14 or
24 something like that?

25 MR. LALLY: Yes.

1 THE COURT: Because that's what I was
2 reviewing when I was looking at this last night.
3 Do you happen to have that CD with you?

4 MR. LALLY: I don't have the CD, but I believe
5 Ms. Gilman should have what's on there loaded up.
6 But I'm not sure. I'd have to check with her.

7 THE COURT: All right. I do just want to say
8 I thought following the exhibit that went in, 103,
9 following the text messages back and forth where
10 John O'Keefe and Mr. Higgins -- it was difficult to
11 follow in a sort of bubble format.

12 MR. JACKSON: It was terrible.

13 THE COURT: So I would like to facilitate
14 something that the jurors can see and have. I know
15 it's important to your case. I'll give you time to
16 do it. But if Ms. Gilman can just do two things:
17 If she can tell you -- if she can pull out what is
18 Exhibit 104, if she can pull that format up now so
19 I can see it to see if the actual text messages --

20 MR. LALLY: Show up.

21 THE COURT: -- can show up. Are yours marked?

22 MR. JACKSON: No.

23 THE COURT: Or do you have them unmarked.

24 MR. JACKSON: I was going to say I'll let him
25 use my copy that's already printed. I've got an

1 ELMO set up right there. I don't -- I just want to
2 get this done expeditiously.

3 THE COURT: I know. Rather than him using
4 your copy, if you can -- how many pages is it?

5 MR. YANNETTI: Fifty-six.

6 THE COURT: It's 56 in this format. All
7 right.

8 THE COURT REPORTER: I didn't hear how many
9 pages.

10 MR. JACKSON: Eighty to 90 pages for both.

11 THE COURT: We can make a hard copy, if you
12 can take that and make a hard copy? I want you to
13 have your own copy to follow along with.

14 MR. JACKSON: Yes, Your Honor.

15 THE COURT: I don't want to prejudice you in
16 any way because the Commonwealth is using your
17 copy. Run it through a copier.

18 MR. JACKSON: Yes. That would be great. I'll
19 just give you my entire copy to go downstairs and
20 make a whole copy of it.

21 MR. LALLY: Okay.

22 MR. JACKSON: You can use the ELMO.

23 THE COURT: Hopefully you have somebody who
24 can do that for you. Let's wait. Ms. McLaughlin
25 is talking to Ms. Gilman. Because what I'm

1 concerned about is what has been entered as the
2 exhibits, you can't tell who is saying what.

3 MR. JACKSON: I actually thought, you know,
4 we'd introduce this as the exhibit, which is why I
5 was saying, your transcript is great but this is
6 just as good, like why not show this on the -- I
7 wasn't even thinking about that. That's ugly and
8 hard to deal with.

9 THE COURT: This is what I was dealing with,
10 these two.

11 MR. JACKSON: You haven't seen this either?

12 THE COURT: No.

13 MR. JACKSON: Okay.

14 THE COURT: So that's why I did not -- when I
15 reviewed the grand jury minutes for the previous
16 motions, I did not recall that this was on that
17 disk.

18 MR. JACKSON: Okay.

19 THE COURT: Ms. McLaughlin, if you could
20 return here for a minute, please?

21 I think what we are going to do to speed
22 things along is Mr. Jackson or Ms. Little will give
23 the Commonwealth what they have that was provided
24 by the Commonwealth that I really do think was
25 probably that disk at the grand jury, 14 or 15 or

1 something, the grand jury exhibit. We will copy it
2 or somebody can copy it, and y'all can use that
3 unless you think Ms. Gilman has this that she can
4 pull up.

5 MS. MC LAUGHLIN: During the morning recess if
6 we can either check that we have it and then -- but
7 if the defendants will make a copy of it to have
8 and then in the meantime we'll also be looking at
9 what Ms. Gilman has available.

10 THE COURT: Can I trouble you, Tori, to make a
11 copy of this? Okay.

12 MR. JACKSON: That would be good. Sure. No
13 problem.

14 THE COURT: All right. So I know there is an
15 interest in getting this moving. I do think
16 Mr. Lally is moving it forward quite a bit.

17 MR. JACKSON: I do too.

18 THE COURT: And just on that note, if you are
19 not going to be here Tuesday, depending on how
20 things are later, I need to have a colloquy with
21 your client about that. We can do it at sidebar so
22 it's not a spectacle.

23 MR. JACKSON: Of course. That makes perfect
24 sense.

25 THE COURT: Okay?

1 MR. JACKSON: Yes.

2 THE COURT: All right. Thank you.

3 MR. JACKSON: Thank you.

4 (Whereupon, the sidebar conference concluded
5 and a brief recess taken.)

6 (Court resumes at 11:17 a.m.)

7 (Defendant present.)

8 THE COURT: While the jurors are coming in,
9 I'll see counsel at sidebar.

10 (Whereupon, there was a sidebar conference as
11 follows:)

12 THE COURT: All right. So are you all set,
13 Mr. Lally, with this?

14 MR. LALLY: Just about. So this is what will
15 go to the jury as a physical copy and what I would
16 show to Mr. Higgins. All the numbers have been
17 blacked out on that.

18 THE COURT: Okay.

19 MR. LALLY: Ms. Gilman is, I think, through
20 about 63 of these.

21 THE COURT: Okay.

22 MR. LALLY: As far as the computer is
23 concerned.

24 THE COURT: Okay.

25 MR. LALLY: So what I've suggested with her is

1 that once we get beyond that page if she is going
2 to show anything beyond page 63, take it down off
3 the screen, do it on her screen, bring it up,
4 scroll down past the number and then put it up. I
5 mean, the number isn't something that I need to
6 show.

7 THE COURT: Okay. Are you satisfied with
8 that?

9 MR. JACKSON: That's fine with me.

10 THE COURT: So what I'd like to do --

11 MR. LALLY: She'll finish that subsequently.

12 THE COURT: All right. The copy that I got
13 regarding John O'Keefe's email, just the way I got
14 it, was in reverse order. I don't know if yours is
15 like that too.

16 MR. JACKSON: Ours is like that.

17 THE COURT: So before that goes to the jury,
18 we just need to flip it into the proper order, and
19 I would like that to be marked 103A.

20 MS. LITTLE: I think it's in. I'm sorry. Not
21 to interrupt, I think it's in reverse order because
22 that's how it appears in the phone. So it's
23 screenshots. So if you reverse it, it's going to
24 be all mixed up.

25 THE COURT: All right. But it's different

1 than what Mr. Lally had, what's in 103. It starts
2 on November 24th. What you have ends on November
3 24th

4 MS. LITTLE: Right. But if you mix it, the
5 conversations are going to be out of order.

6 THE COURT: Okay. We can just put it in as
7 103. There is one thing I wanted to just alert you
8 to. I received a motion of the blogger, who is
9 usually here, named Jessica Merchato (phonetic), at
10 7:37 this morning. She said, I will not be in the
11 courtroom today at the Karen Read trial due to a
12 previously scheduled meeting that I just can't
13 miss. I know I have major FOMO @turtleboy. [REDACTED]

14 Court Order: Jurors or Juror Issues [REDACTED]

15 Court Order: Jurors or Juror Issues [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 MR. LALLY: No.

24 THE COURT: I don't think there is enough at
25 this point in time.

1 MS. MC LAUGHLIN: [REDACTED]

2 THE COURT: [REDACTED] Court Order: Jurors or Juror Issues

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 MR. LALLY: Not at this time.

7 THE COURT: Okay.

8 MR. JACKSON: Thank you, Your Honor.

9 (Whereupon, the sidebar conference concluded.)

10 (Jury present.)

11 THE COURT: Jurors, we appreciate your

12 patience. We actually made things easier for you.

13 So it was worth the time.

14 THE CLERK: I remind you, you are still under

15 oath.

16 THE WITNESS: Yes.

17 THE COURT: Mr. Lally, are you going to start

18 right with messages?

19 MR. LALLY: Yes, Your Honor.

20 THE COURT: All right. Folks, be mindful of

21 the instruction I have given you on digital

22 evidence that you have to find before you consider

23 them. Also, I want to tell you that what you are

24 going to hear or see is testimony about certain

25 statements allegedly made by the defendant. You

1 are to view those statements solely for the limited
2 purpose of the defendant's state of mind as it
3 might go to the nature of the relationship with
4 John O'Keefe and potential motive. Okay?

5 All right, Mr. Lally. Go right ahead.

6 MR. LALLY: Thank you. Your Honor, may I
7 approach the witness?

8 THE COURT: Yes.

9 BY MR. LALLY:

10 Q I am presenting before you now a separate
11 series of documents, about 118 pages in length. And
12 the page number, just for your reference, is on the
13 side there.

14 In general, do you recognize what those are?

15 A Yes.

16 Q And what do you recognize those to be?

17 A Text messages between the defendant and I.

18 MR. LALLY: Your Honor, the Commonwealth would
19 move to introduce them as the next exhibit.

20 THE COURT: As the next exhibit. We are going
21 to mark that 104A.

22 MR. LALLY: Thank you.

23 THE CLERK: 103A, Your Honor.

24 THE COURT: 103A?

25 THE CLERK: That's my understanding. I think

1 the others are marked 103. So they should be
2 marked 103A.

3 THE COURT: John O'Keefe's texts were 103.

4 THE CLERK: My mistake.

5 THE COURT: So it's 104.

6 THE CLERK: Yes, Your Honor.

7 (Whereupon, pages of texts with Karen Read are
8 entered and marked Exhibit No. 104A in Evidence.)

9 THE COURT: Jurors, you'll have both Exhibit
10 104 with you that was a little bit difficult to
11 read. What we've taken all this time for is
12 counsel was great to work out a form that was much
13 clearer for you to be able to read and that will be
14 attached or right with Exhibit 104.

15 THE COURT REPORTER: So marked, Your Honor.

16 THE COURT: Thank you. All right. Mr. Lally?

17 MR. LALLY: Thank you, Your Honor.

18 BY MR. LALLY:

19 Q Now, Mr. Higgins --

20 MR. LALLY: First, Your Honor, may I request
21 permission to publish to the jury on the screen,
22 please?

23 THE COURT: Yes.

24 MR. LALLY: Starting with page 1, Ms. Gilman.

25 BY MR. LALLY:

1 Q Now, Mr. Higgins, what's up on the screen, is
2 that what you have before you as Exhibit 104A?

3 A Yes.

4 Q And, as you just mentioned, these are text
5 messages between yourself and Ms. Read; is that
6 correct?

7 A Yes.

8 Q And on what dates did you first receive any
9 communication from Ms. Read?

10 A January 12th, 2022.

11 Q And, prior to that, had you had her number or
12 did she have your number, as far as you were aware?

13 A No.

14 Q So you had never communicated to her via cell
15 phone or any other means prior to January 12th, 2022?

16 A No, I had not.

17 Q So initially you received a text on that date
18 from an unknown number; is that correct?

19 A Yes.

20 Q From the text before you and what's up on the
21 screen, as far as there are gray bubbles on the left
22 and blue bubbles on the right, which is you and which
23 is Ms. Read?

24 A The blue bubbles would belong to myself.

25 Q So the other bubbles would be Ms. Read; is

1 that fair to say?

2 A Yes.

3 Q And so that initial communication you receive
4 on January 12th, 2022, that is about 8:27 p.m.; is that
5 correct?

6 A Yes.

7 Q And what was the content of the message that
8 you received?

9 A You want me to read it?

10 Q Yes, please.

11 A (As read), "Hey, Brian. It's Weedwhacker."

12 Q And how did you respond to that?

13 A Question mark.

14 Q And, if it's helpful to you, sir, if you can't
15 see the screen sort of from where you are, you can read
16 along in the exhibit before you.

17 A Okay.

18 Q Now, as far as that communication is
19 concerned, is the Weedwhacker -- what, if any, meaning
20 did that have to you or --

21 A So ultimately, it was based off of an
22 interaction with the defendant, kind of a nickname that
23 she adopted.

24 Q And how did that nickname sort of come to be
25 or what, if anything, transpired between the two of you

1 that led to that?

2 A So I was leaving, I believe, my residence one
3 day in Canton, traveling down Pleasant Street. I saw
4 the defendant along the side of the house on the
5 Pleasant Street side, using a Weedwhacker. I gave kind
6 of a beep of the horn. And the defendant gave me the
7 finger. So I realized that she clearly must not have
8 recognized me possibly because of what I was driving.
9 I was in my work vehicle.

10 So I spun the vehicle around. And, as I
11 pulled up to roll down the window, she said something
12 to the effect, get the fuck away from me. My husband
13 is a Boston cop. And then I rolled down the window
14 more and she clearly recognized me, who I was in that
15 vehicle.

16 Q And did that become sort of a recurring theme
17 in subsequent conversations that you had with Ms. Read?

18 A Yes.

19 Q Now, sir, if I could direct your attention to
20 page 6 within that exhibit before you.

21 THE COURT: They're not numbered, right,
22 Mr. Lally?

23 MR. LALLY: I'm sorry?

24 THE COURT: They're not numbered? Is your
25 copy numbered?

1 THE WITNESS: No, Your Honor, not that I can
2 see.

3 THE COURT: They're not. So be cognizant of
4 that when you ask questions.

5 MR. LALLY: Your Honor, I believe they are.
6 That's why I hesitated.

7 BY MR. LALLY:

8 Q It's sort of in the middle of the page, facing
9 sideways, if you turn the page.

10 A Oh. My apologies. I have it now. It's very
11 small.

12 Q So just on this page, directing your attention
13 to the bottom, it sort of goes on to the next date of
14 January 13th; is that correct?

15 A Yes.

16 Q If I could direct your attention to page 7 of
17 those text messages.

18 And, Ms. Gilman, if I could have page 7 on the
19 screen.

20 And, sir, if you could read from page 7 and,
21 if you could, just indicate who's speaking and what is
22 being said in this communication.

23 A So again, I'm in the blue bubbles. (As read),
24 "Did you try those Smirnoff screwdrivers? I stopped at
25 the 'Hilly' for one last night." I said (as read),

1 "Haha. How did you get my digits?" The defendant
2 responded (as read), "The Melissa and Lito show." I
3 said (as read), "Haha. I thought you creeped John's
4 phone." I said, "Haha again." The defendant responded
5 (as read), "No way. I was the last person in Greater
6 Canton who didn't have your number. I think even Kerri
7 has it." I responded (as read), "What," with a bunch
8 of question marks. I said (as read), "I just don't
9 give my personal number out to anyone. How would Kerri
10 have my number," with a bunch of question marks. And
11 the defendant responded (as read), "Melissa had it."

12 Q Now, as far as in those communications, the
13 reference the defendant makes to the Melissa and Lito
14 show, do you know what that means?

15 A They are two individuals that I also know from
16 the Hillside.

17 Q And the Kerri person that she refers to, do
18 you know who that is?

19 A I believe that is Kerri Curran, Chris Curran's
20 wife.

21 Q Now, if I could direct your attention to page
22 9.

23 And, Ms. Gilman, if I could have page 9?

24 And, again, sir, if you could read from page 9
25 as far as that conversation goes and just indicate whom

1 is speaking at different points.

2 A Okay. So the defendant said (as read), "I'd
3 prefer Weedwhacker." I responded (as read), "That's
4 the thing about nicknames." The defendant said (as
5 read), "We were tossing around the idea of a short vaca
6 with the Curran show. Wanted to see if you were game."
7 I responded (as read), "You don't have a say." I
8 believe I was referring to nicknames. And I said (as
9 read), "Vacation where?" The defendant responded (as
10 read), "I know. They need to happen organically. I'm
11 the queen of nicknames. Was just going to rent a beach
12 house in" -- I believe it was supposed to say Fort
13 Lauderdale. It's abbreviated. "Something quick and
14 easy." I said (as read), "Hmmm?" The defendant
15 responded (as read), "I'm the queen of vacations, too.
16 Always a good time." I responded (as read), "I'm going
17 to Nashville next month, 19th to 21st, for a benefit.
18 One of our guys got shot in the head. You guys should
19 come."

20 Q And, as far as either one of those trips that
21 you were discussing, do you recall any further
22 discussion or going on any of those trips?

23 A Well, I mean, I definitely went to Nashville
24 for that benefit for one of my coworkers. There may
25 have been more conversation about the Florida trip, but

1 I can't specifically recall it.

2 Q Now, sir, if I could direct your attention to
3 page 16.

4 And, Ms. Gilman, if I could have that?

5 And this is on that same date of January 13th;
6 is that correct?

7 A I believe so. The date is not at the top
8 here, but I believe it is.

9 Q And, again, sir, if you could read from that
10 page of communication as far as who was speaking and
11 what was said?

12 A So there is a photograph of somebody with a
13 Weedwhacker. The defendant said (as read), "No, you're
14 not a creep." I said (as read), "Nope." She said (as
15 read), "You're kind of a loner, which I used to be." I
16 responded (as read), "No, not really. I have a ton of
17 buddies, but I only let a handful of friends in that
18 I'm tight with. So you think you got me figured out?"
19 And then I type "Circle of Trust" in quotes.

20 Q And, sir, if I could direct your attention to
21 the next page No. 17?

22 And, Ms. Gilman, if I could have that.

23 And, again, sir, if you could read from page
24 17 as far as what is said and who is talking?

25 A So the defendant said (as read), "Yeah. I

1 said loner, not loser. I assume you know a lot of
2 people," people abbreviated. "You never really can
3 figure anyone out completely. Your dad died when you
4 were young?" And I responded (as read)," He died in
5 March of 2020. I'm so not a loser. You won't figure
6 me out. LOL." The defendant responded (as read), "No
7 one is a loser. I just didn't mean loner to imply
8 friendless. I'm sorry that that's recent. It wasn't
9 COVID, was it?" I responded (as read), "Cancer." The
10 defendant responded (as read), "I know you date girls
11 who don't lock the house behind them and you are
12 private and observant. I'm sorry. What kind?" I
13 responded (as read) "Lung, brain, kidney and pelvis.
14 How do you know all these things? LOL."

15 Q And if I could turn your attention to the next
16 page, page 18. And again, sir, if you could read from
17 that?

18 A In the blue bubbles is me. I said (as read),
19 "You're funny." The defendant responded (as read),
20 "Yikes. Wow. That's rough. Jesus. I'm sorry. We
21 chat a lot at the Hillside." I responded (as read),
22 "Don't be sorry. Life is hard sometimes. I always
23 figure it out." And then I say (as read), "Who chats?"
24 The defendant responded (as read), "Life is hard but
25 losing people is the hardest. So I'm sorry we chat."

1 I responded (as read), "That's all you got, 'We chat'?"
2 Sure. You're from Brockton. Spit it out. The
3 defendant responded (as read), "You and I chatted about
4 the girl who kept forgetting to lock the door." I said
5 (as read), Oh, she has been out of play like for three
6 months now. And then I believe it starts to say (as
7 read), "Out of rotation?"

8 Q And then, sir, if I could direct your
9 attention to page 20. And, again, sir, if you could
10 read from that page.

11 A I'm in the blue bubbles again. I said (as
12 read), "Just got a Saturday invite." The defendant
13 said (as read), "Did you say 'yes'?" I said (as read),
14 "Not yet," with a bunch of periods, but did respond.
15 The defendant said (as read), "What did you say,
16 Mr. Elusive?" I responded (as read), "No. I just
17 don't want to intrude on your couples night. Haha. I'm
18 shy." The defendant responded (as read), "We prefer to
19 hang out with noncouples. Bob Gallery is probably
20 coming too solo. We'll probably do cards or something
21 at some point. I'm inviting you." And I said (as
22 read), "Haha."

23 Q Now, sir, is that the Saturday night that's
24 being referenced there? Is that the same night that
25 you had gone over to the home at some point for the

1 Patriots game?

2 A Yes.

3 Q And if I could direct your attention to the
4 next page, page 21.

5 A Yes.

6 Q And, again, if you could read from that page?

7 A The defendant said (as read), "John said Brian
8 is being 'wishy-washy' now, in quotes. I responded (as
9 read), "Haha. Did you tell him you texted me?" The
10 defendant responded (as read), "No." And then I gave a
11 thumbs-up. Then I said (as read), "You cranky now?"
12 The defendant said (as read), "Haha. No. Just stop
13 being so anti-couples. Most couples don't even like
14 each other." I said (as read), "Name a few." The
15 defendant said (as read), "Name a few? I don't know.
16 All of them? They all want to hang out with single
17 people." And then I said (as read), "Hmmm."

18 Q Thank you. Sir, if I could direct your
19 attention to page 26. And, sir, if I could ask you to
20 read from that page?

21 A In blue is going to be myself again. (As
22 read), "Foul ball." The defendant responded (as read),
23 "You stink." I said (as read), "You suck and you're
24 double trouble." The defendant responded (as read),
25 "You're hot." I responded (as read), "Are you serious

1 or messing with me?" The defendant responded (as
2 read), "No. I'm serious." I responded (as read), "The
3 feeling is mutual. Is that bad? How long have you
4 thought that?" The defendant responded (as read), "Are
5 you okay driving? You don't want to stay here." I
6 responded back (as read), "I'm fine. I have an office
7 at the P.D." You didn't answer the question. And then
8 it starts to say -- the defendant said (as read),
9 "Rather you stay here."

10 Q And is that -- to your memory, when is that
11 text exchange taking place in reference to the night
12 that you went over to the O'Keefes' house?

13 A I believe it was that night.

14 Q Now, at Mr. O'Keefe's house on that particular
15 evening, do you recall which -- how you came into the
16 house?

17 A I believe it might have been the front door.

18 Q And, if you know, about how long were you at
19 Mr. O'Keefe's house that night?

20 A I was probably one of the last people to leave
21 I think.

22 Q And what, if anything, happened as you were
23 exiting from Mr. O'Keefe's house that night?

24 A So as I was exiting the houses, it was either
25 through the breezeway or the garage. And, as we were

1 walking out, the defendant planted a kiss on me.

2 Q Now, before you went out that way, where was
3 Mr. O'Keefe? Did you say goodbye to him or anything
4 like that?

5 A I think I said "goodbye" to him. He might
6 have been in the bathroom. I'm not 100 percent
7 positive where he was.

8 Q And, when you went to leave, which exit from
9 the house were you headed to initially?

10 A Well, as I said, I don't remember exactly if
11 it was the breezeway or the garage I was starting to
12 walk through. But whichever way I started to exit, the
13 defendant told me to go a different way.

14 Q And which way did the defendant tell you to
15 go?

16 A Well, her way.

17 Q And what --

18 A And I honestly can't tell you which door that
19 was. It was either the breezeway or the garage.

20 Q And, as you were going out -- again, I'm sorry
21 -- what happened?

22 A The defendant kissed me.

23 Q And how did she kiss you?

24 A Not like a friend.

25 Q Lip to lip; is that fair to say?

1 A Yes.

2 Q Okay. Like a romantic case?

3 A That's the way I interpreted it.

4 Q And were you still inside the house at the
5 time this occurred or were you outside the house, if
6 you know?

7 A I'm not sure if we had just got to the outside
8 or not. It might have -- I'm not sure if I'm -- it was
9 close proximity to leaving.

10 Q And what was your reaction to that?

11 A I was taken aback.

12 Q Was that something that you were expecting?

13 A No.

14 Q And about how long was it between when that --
15 when the defendant kissed you and when you left?

16 A Oh, almost immediately.

17 Q Now, sir, if I could turn your attention back
18 to the exhibit before you on page No. 27.

19 A Yes.

20 Q Again, sir, if you could read from that page
21 and who's speaking?

22 A So I'm in the blue bubbles. And I said (as
23 read), "I wish. I think you're messing with me." The
24 defendant said (as read), "Why do you think that?" I
25 responded (as read), "Because this is so out of left

1 field. Where did these feelings come from?" The
2 defendant responded (as read), "I just think you're
3 like me." I said (as read), "Meaning?" The defendant
4 said (as read), "Do you have your own kids?" I said
5 (as read), "I have no kids. How am I like you? Ummm,
6 hello?" And the defendant responded (as read), "Aren't
7 we alike." I responded (as read), "I think so. So why
8 did you get my number and reach out to me?" And I
9 think the defendant put a question mark on that bubble,
10 I believe, or I might have. I don't know.

11 Q Now, that conversation as far as you asking
12 her about why she reached out to you, how often was
13 that question asked by you through the course of these
14 text communications?

15 A Well, the extent of the actual communication
16 via text between the defendant and I was between
17 January 12th and January 29th when John passed. On the
18 28th and 29th, the 28th I sent a text as we spoke about
19 before when we were at the Waterfall. That text didn't
20 respond. There was a text sent by the defendant to me
21 the next day.

22 So in that time period between the 12th and
23 the 29th, there was nine days that the defendant and I
24 exchanged text messages. With that being said, those
25 text messages, I don't believe, were every day,

1 consecutive days. There were nine days in between the
2 12th and the 29th.

3 Q So as far as that questioning as far as posing
4 to her why did she reach out to you, was that something
5 that you asked once or more than once?

6 A Yeah. I asked it more than once. And, during
7 the pendency of this communication, I was basically
8 trying to suss out what the intentions were of the
9 defendant. Was the defendant interested in me? Was
10 she at the end of her relationship with John? Was she
11 trying to weaponize me against John and put me in the
12 middle? There were numerous things that were going on,
13 and that's what I was trying to vet out or suss out or
14 whatever you want to call it. But I was having a hard
15 time accepting what was happening.

16 Q Sir, if I could direct you to the next page,
17 page 28. And, again, sir, if you could read from that
18 page?

19 A So I'm in the blue bubbles. (As read), "Shoot
20 straight with me." The defendant responded (as read),
21 "I told you. I just think we are alike. Right??" I
22 responded (as read), "Yes. Agree. Now what?" The
23 defendant responded (as read), "I don't know." I said
24 (as read), "Ummm, shouldn't you know?" The defendant
25 responded (as read), "Do you like me?" I said (as

1 read), "Yes, from jump." The defendant said (as read),
2 "When was jump"? I said (as read), "First time I saw
3 you." The defendant responded (as read), "When was
4 that?" I said (as read), "Hmmm? Hillside for your
5 sure."

6 Q And if I could direct your attention to the
7 next page, 29. And if I could ask you to read from
8 that, sir?

9 A So again I'm in the blue bubbles. (As read),
10 "Hillside for sure. When were you interested?" The
11 defendant responded (as read), "I don't know. You're
12 just my type." I responded (as read), "You think you
13 can handle me? I thought you were happy?" The
14 defendant responded (as read), "How do you know if I'm
15 happy?" I said (as read), "I just assumed." The
16 defendant responded (as read), "Are you hard to
17 handle?" I may have put a question mark. Then I said
18 (as read), "What do you like about me?" The defendant
19 responded (as read), "I just feel like you're from my
20 neighborhood." I said (as read), "Yeah, ditto." The
21 defendant responded (as read), "And I think you're
22 hot."

23 Q And if I could direct your attention to the
24 next page, page 30. If I could ask you to read from
25 that, sir?

1 A I'm in the blue bubbles again. (As read),
2 "You really think that? I have always thought that
3 about you." The defendant responded (as read), "What?"
4 I responded that you're hot, smart, witty, but I didn't
5 think you were interested. The defendant responded (as
6 read), "Witty?" I responded (as read), "Yeah, meaning
7 quick with a response. Tell me why you got my number
8 and reached out to me." The defendant responded (as
9 read), "Just thought we were the same/from the same
10 neighborhood." I responded (as read), "Are you afraid
11 to say what's on your mind, what's in your mind?" And
12 then I said, "On." The defendant responded (as read),
13 "No. Didn't I? No, didn't I?"

14 Q And, sir, if I could turn your attention to
15 the next page, 31, and ask you to read from that.

16 A I'm in the blue bubble again. (As read), "I'm
17 glad I stopped by. I should have come earlier. Do you
18 really live in Mansfield?" The defendant responded (as
19 read), "Yeah. I basically -- yeah. I was basically
20 begging you." I responded (as read), "You don't have
21 to bed me." I mean to say beg. The defendant
22 responded (as read), "Huh?" I said (as read), "I will
23 give you what you want. How are you texting right now?
24 And I said (as read), "Uggh. Leaving me hanging." The
25 defendant responded (as read), "No." I typed "kids,"

1 and then "kinda." The defendant responded (as read),
2 "How am I texting?" And I began to say (as read), "Is
3 everyone asleep?"

4 Q Now, as far as the communication from the
5 defendant indicating, yeah, I was basically begging
6 you, what did you take that to mean?

7 A That she wanted me to come over.

8 Q And if I could turn your attention to the next
9 page, page 32, and if I could ask you to read from that
10 page, as well.

11 A So it starts off with the defendant saying (as
12 read), "I just just wide awake on my phone. Yes, they
13 are." I said (as read), "I should have stayed. LOL.
14 So now what?" The defendant said (as read), "Yes, you
15 should have." I responded (as read), "That would have
16 been distracting. So now what? So now what?" And
17 then I said (as read), "Now." The defendant said (as
18 read), "Now what, what?" I responded (as read),
19 "Ball's in your court." The defendant said (as read),
20 "What do you want?" I said -- I responded (as read),
21 "Loaded question. What do you want?" The defendant
22 responded (as read), "I asked you!" I, in turn, said
23 (as read), "No. You initiated this."

24 Q And if I could turn your attention to the next
25 page, 33. If I could ask you to read from that, sir?

1 A I said (as read), "Spit it out." I'm in the
2 blue bubbles. The defendant said (as read), "Hey, we
3 are single and we don't have kids. We can do whatever
4 we want." I responded (as read), "Don't you have a
5 boyfriend?" The defendant responded (as read), "Where
6 are you?" I said (as read), "Canton." The defendant
7 said (as read), "Where?" I responded (as read), "My
8 office is at the P.D. Why? Why, are you going to
9 Mansfield?" The defendant responded (as read), "Where
10 is that?" I said (as read), "Canton P.D." The
11 defendant said (as read), "I have a house there from
12 before I reconnected w John." I responded (as read),
13 "Oh. I feel like you're not really saying what's on
14 your mind."

15 Q If I could turn your attention to the next
16 page, 34, and ask you to read from that, sir.

17 A The defendant starts off and says (as read),
18 "Do you like me?" I responded (as read), "Yes,
19 clearly." The defendant said (as read), "Come over to
20 my house." I responded (as read), "When?" The
21 defendant said (as read), "When works for you." I said
22 (as read), "Whoever and then whenever when works for
23 you?" The defendant said (as read), "I asked you
24 first." I responded (as read), "I think you're messing
25 with me." The defendant said (as read), "I'm glad you

1 came over tonight," with some type of face. I
2 responded (as read), "Me too. Ball's in your court.
3 What do you want, Karen? You looked great tonight."

4 Q If I could direct your attention to the next
5 page, 35, and the second-to-last blue bubble down the
6 bottom, starting with "are you glad." Do you see that?

7 A Page 35?

8 Q Yes.

9 A And where is it again?

10 Q Second-to-last blue bubble, starting with "are
11 you glad."

12 A Yes. I am in the blue bubble. I said (as
13 read), "Are you glad you walked me out?"

14 Q And what did she respond?

15 A The defendant said (as read), "Ummm, yes,"
16 with like a semicolon and some type of a mark there.
17 (As read), "Are you?" And I said d-e-f, for
18 definitely."

19 Q And if I could direct your attention to the
20 next page, 36, and if you could please read from that?

21 A So at the top, I'm in the blue bubbles, it
22 says (as read), "Yes." And then I said (as read), "Are
23 you going home tonight or tomorrow a.m.?" The
24 defendant texted (as read), "We kissed, right?" So
25 then I put a question mark on her question and said (as

1 read), "Is this a trick question?" The defendant said
2 (as read), "I don't know when I'm going home. I'm
3 selling my house," with what I think is a smiley face.
4 "What a trick question," and a couple of question
5 marks. I responded (as read), "Are you moving to
6 Canton? I'm following your lead with this." The
7 defendant responded (as read), "I live here but I have
8 property in Mfield." I'm guessing it's Medfield. The
9 defendant said (as read), why my lead? I don't want
10 any responsibility." I responded (as read), "You
11 started this, right? Why did you get my number, and it
12 says (as read), "Each out to me." It meant to say
13 reach out to me. I then said (as read), "Still have
14 not told me."

15 Q And, sir, if I could direct your attention to
16 the next page, 37, and ask you to read from that.

17 A The defendant said (as read), "Sorry. Should
18 I not have?" I responded (as read), "I'm fine with it.
19 Just don't know why you can't answer." The defendant
20 said (as read), "You're mad at me?" I said (as read),
21 "OMG. No, not at all. You're being silly." The
22 defendant said (as read), "I told you! I just think
23 you're like me and I'm attracted to you." And then she
24 said "a lot." I responded (as read), "Feeling is
25 mutual. I just never saw this coming." The defendant

1 said (as read), "Why?" I responded (as read), "Because
2 I just assumed you were happy with your situation."
3 The defendant responded (as read), "I was, but things
4 have deteriorated."

5 Q And if I could direct your attention to the
6 next page, page 38, and ask you to read from that, sir.

7 A I said (as read), "Why? How so? What did
8 Melissa say when you asked for my number?" The
9 defendant responded (as read), "It is very, very
10 complicated. He and I dated when we were kids and then
11 his sister died and everything got fucked up." I
12 responded (as read), "He seems very into you." The
13 defendant responded, "I just told Melissa that I had
14 your number but lost it." I said (as read), "That's
15 cute. She wasn't suspicious?" The defendant responded
16 (as read), "No. She's great." I responded (as read),
17 "Does she know you like me?" The defendant responded
18 (as read), "She's a sweetie. We just agreed you are
19 great," with another smiley-type face.

20 Q And, sir, if I could direct your attention to
21 page 40 and ask you to read from that.

22 A The defendant said (as read), "Yeah, but where
23 is that? I have had all my shit here for a couple of
24 years and my house has been vacant. But I'd like to
25 get closer to the water. I responded (as read), "Hmmm.

1 Are you breaking up or staying together?" The
2 defendant responded (as read), "I don't know. He
3 hooked up with another girl on vacation. I'm very
4 close to his niece. It is a very fucked-up situation."
5 I responded (as read), "When was that and how did you
6 find out he hooked up? I don't want to complicate your
7 situation." The defendant responded (as read), "We
8 went out -- we went away for New Year's, the four of
9 us. I put the kids to bed and found him in the lobby
10 of our hotel, all over one of our friend. Whatever.
11 It doesn't matter." I responded (as read), "It does
12 matter."

13 Q Now, as far as that indication that she made
14 to you either through text communications or in person,
15 did she indicate at any point in time where that
16 occurred?

17 A So there was an occasion that the defendant
18 stopped at my house. And, again, the conversation that
19 took place at my house was in relation to, again,
20 sussing out and trying to figure out if this was --
21 everything that I stated before, like was this
22 legitimate? Was she seriously interested in me? Was
23 she at the end of her relationship with John?

24 And, during that, there was touch on that
25 topic and I came to -- it was my understanding at that

1 point that this incident took place in Aruba on New
2 Year's Eve, based off the text messages and the
3 conversation at my residence.

4 Q So this was something that she brought up not
5 only in the text communications but in person in
6 communication with you, as well?

7 A Yes. I mean, outside of being over there for
8 the game, there was only one time that the defendant
9 and I ever interacted on a one-on-one basis.

10 Q And if I could direct your attention to the
11 next page, 41, and ask you to read from that.

12 A So I'm in the blue bubbles. And I said (as
13 read), "Did they bang?" The defendant responded (as
14 read), "Does that matter?" I said (as read), "Sorry.
15 I was just asking. I was just trying to figure shit
16 out. The defendant responded (as read), "It doesn't
17 really matter." I said (as read), "Okay. I won't ask
18 again." The defendant said (as read), "I don't care,"
19 with a smiley face. "It doesn't matter. I said -- I
20 responded back (as read), "Okay. Hear you loud and
21 clear, Karen." The defendant responded (as read), "Ah,
22 okay." I responded (as read), "Why are you getting
23 your thing all twisted up over simple questions?" And
24 then I typed thumb up. The defendant responded (as
25 read), "I'm not. I am?" I responded (as read),

1 "You're kind of getting defensive." The defendant
2 responded (as read), "Not at all!"

3 Q Thank you, sir. If I could direct your
4 attention to page 47 and ask you to read from that.

5 A The defendant is in gray. She said (as read),
6 "We did kiss earlier, no!" I responded in blue bubble
7 (as read), "I think you initiated that, no?" The
8 defendant said (as read), "Yup. Do I owe you an
9 apology?" I said (as read), "OMG. No. Why are you
10 being sensitive?" The defendant responded (as read),
11 "I'm not." I responded (as read), "Kinda." There's a
12 "pfft, never," responded by the defendant. "What do you
13 want from me?" I responded (as read), "What's on the
14 table?" The defendant said (as read), "What do you
15 want ideally?" I responded (as read), "The real deal."
16 The defendant responded (as read), "It doesn't exist."

17 Q Thank you, sir. If I could direct your
18 attention to page 57, sir, and ask you to read from
19 that.

20 A It starts off in blue. I said (as read), "I
21 can go to any base but usually Hanscom in Bedford or
22 down to the Cape." The defendant responded (as read),
23 "Which base down the Cape? Which branch?" I said (as
24 read), "Army's. Army." The defendant said (as read),
25 "I'm not abnormally sensitive." I responded (as read),

1 "Joint Base Cape Cod. I won't be so hard on you." The
2 defendant responded (as read), "OMG. You're not. You
3 called me trouble. That makes me sound bad." I
4 responded (as read), "I was just playing with you."
5 The defendant responded (as read), "You weren't, but
6 that's okay." I responded (as read), "Stop being
7 sensitive please." The defendant responded (as read),
8 "I'm not."

9 Q Now, sir, in that page of text communications,
10 you made reference to a base down the Cape; is that
11 right?

12 A Yes.

13 Q And where is that in relation to where you
14 live in Barnstable County?

15 A So I could utilize one of the gates to get
16 onto the base. I can get fuel. I can shop. I then
17 can hit the Bourne Bridge. And I would use that as a
18 cut-through at the time when I was splitting my time
19 between two different properties.

20 Q Is there also like a duty-free shop there?

21 A There is, yes.

22 Q And, at some point throughout the course of
23 the text communications, did you offer to pick
24 something up for the defendant from that shop?

25 A I believe so.

1 Q If I could direct your attention to page 60
2 and ask you to read from that, sir.

3 A The defendant said (as read), "I don't know?
4 It's an old colonial. It has a lot of bedrooms," with
5 kind of an emoji. I responded (as read), "More than
6 you clearly need. Are you moving to Canton?" The
7 defendant said (as read), "I know seriously some rooms
8 I only go in to dust. Not anytime soon. I'm there
9 most of the time but sometimes it's a lot." I
10 responded (as read), "A lot why?" The defendant
11 responds -- I then said (as read), "Do you even know
12 what you want? Or who?" The defendant responded (as
13 read), "Because I went from being solo to trying to
14 give attention to kids who aren't mine and I never
15 wanted kids." I responded (as read), "I thought you
16 were happy in this -- I thought you were in this happy
17 relationship." The defendant responded (as read),
18 "Everyone is happy at the Hillside."

19 Q And if I could direct your attention to the
20 next page, 61, and ask you to read from that.

21 A So it starts off with the defendant. It said
22 (as read), "Everyone is happy at the Hillside!" I
23 responded (as read), "Oh, God. You avoid things." The
24 defendant responded (as read), "It's just very, very
25 complicated dynamic with the four of us. He isn't cut

1 out for what he's doing and the kids present constant
2 issues." I responded (as read), "I think he believes
3 he is doing the right thing." The defendant responded
4 (as read), "Well, of course he is, but his heart isn't
5 in it. It's only because he was very, very close to
6 his sister." I responded back (as read), "I know how
7 you feel kinda. I was married, and when I met her, she
8 had a two-and-a-half-year-old. I went from being
9 single to being a dad. It's hard." Then I said (as
10 read), "I'm divorced since 2017 and have no kids."

11 Q If I could ask you to turn to the next page,
12 62, and ask you to read from that, sir.

13 A I said (as read), "I'm divorced since 2017 and
14 I have no kids." The defendant responded (as read), "I
15 try very hard, but they are very spoiled and they're
16 not my family. My parents keep telling me I'd feel
17 differently if they were mine or my own sister's. Then
18 I told you he got drunk and sloppy on NYE while we were
19 away, and that has really affected me." I responded
20 (as read), "What did he exactly do?" The defendant
21 responded (as read), "I never got married, and now
22 somehow I'm arguing w someone about raising kids," with
23 an emoji. I responded (as read), "Why don't you tell
24 me?" The defendant responded (as read), "He was a
25 puddle all day and then disappeared. Then I found him

1 all over our friend's sister in the lobby of our hotel,
2 and she's gross, which I think may actually be worse.
3 Not sure." I responded (as read), "Oh, God. Did they
4 bang?"

5 Q I ask you to turn to the next page, sir, page
6 63. If you could read from that?

7 A I'm in the blue. I said (as read), "Did they
8 bang?" The defendant said (as read), "So I was with
9 the kids -- so I was with the kids celebrating New
10 Year's w" -- I think it's without him -- "which
11 shouldn't be my role. No. I doubt it. He was a
12 mess." I said (as read, "Hmmm. Was it the first time
13 with her or do you think there were others?" The
14 defendant responded (as read), "I don't really think
15 there were others. I'm with him all the time. He
16 never seems to want to go anywhere w/o," so without,
17 "me." But, honestly, the issues with the kids bother
18 me more than him actually cheating. They are constant,
19 and it feels like a lose/lose." I responded (as read),
20 "Hmmm. You clearly have a lot of feelings swirling
21 inside you." The defendant responded (as read), "Yeah.
22 It's very complicated. Sorry for the rant." I
23 responded or began to respond (as read), "You can vent,
24 babe."

25 Q And if I could turn your attention to the next

1 page, 64, and ask you to read from that, sir.

2 A The defendant said (as read), "Basically, I
3 just feel like I spread myself too thin and sometimes
4 it's thankless." I responded, "Hmmm." The defendant
5 responded (as read), "You probably felt that way too."
6 I responded (as read), "I did at times. It was one,
7 not two, thankfully." The defendant responded (as
8 read), "Want to grab a drink?" I responded (as read),
9 "If you gave me some notice, I could have." The
10 defendant responded (as read), "YOU," in capital
11 letters, "said you were adaptable." I responded (as
12 read), "I am, but I have my work truck with me and not
13 my personal. Do you get angry when you don't get your
14 way?" The defendant responded (as read), "That sounds
15 like an excuse. I rarely get my way."

16 Q Now, as far as her invitation, is that
17 something that occurred on one time or more than one
18 time?

19 A I believe it was more than one time.

20 Q And at any point in time other than the two
21 you've already recounted as far as going over to
22 Mr. O'Keefe's house for the football game or the
23 defendant stopping by your apartment in West Roxbury,
24 were there any other occasions you went over to the
25 defendant's house or out with the defendant by

1 yourself?

2 A No, never.

3 Q And, sir, if I could direct your attention to
4 page 74 and ask you to read from that.

5 A The defendant said (as read), "Are you
6 single?" I responded (as read), "Yes." The defendant
7 said (as read), "I don't think it's out of left field.
8 Wasn't I already begging you to come over last
9 Saturday??" I responded (as read), "You getting my
10 number from Melissa and reaching out to me?" The
11 defendant said (as read), "And on vaca and probably a
12 few other occasions." I responded (as read), "You
13 didn't" -- it should say, "You didn't really beg." The
14 defendant said (as read), "I asked at least twice. How
15 do people usually reach out to each other??" I
16 responded (as read), "Why would I have thought you had
17 any interest in me? Ummm, usually do it when they do
18 live with -- usually do it when they do live with
19 someone." And then I said (as read), "Do not do it."
20 The defendant responded (as read), "Maybe. Maybe not."

21 Q Thank you, sir. If I could direct you to page
22 77 and ask you to read from that, sir.

23 A I said (as read), "I could go on and on but I
24 do not want to pump," it should say, "your shit up too
25 much." The defendant responded (as read), "Thanks for

1 saying that but low comps at the Hillside." I
2 responded (as read), "You know how to ruin something
3 nice. I frequent other places." The defendant
4 responded (as read), "John has showed me about five
5 times the Ring video of me walking you out on Saturday
6 and my voice and my accent are killing me softly," with
7 an emoji of somebody throwing up. I responded (as
8 read), "Ummm, what?" The defendant responded (as
9 read), "Yeah. He has cameras everywhere. You cops,"
10 with another emoji. I responded (as read), "Jesus."
11 The defendant said (as read), "He's like, Christ, are
12 you guys hooking up??" And I said (as read), "OMG.
13 Great."

14 Q If I could turn your attention to the next
15 page, 78, sir.

16 A I responded (as read), "I don't need drama,
17 dude." The defendant said (as read), "No, it's fine."
18 I responded (as read), "Seriously?" The defendant said
19 (as read), "I'm serious!" I said (as read), "You legit
20 planted one on me." The defendant responded (as read),
21 "I know where the cameras are, anyway. Duh." And then
22 it was (as read), "OMG. Bruins," with an emoji after
23 that. I responded (as read), "So your slick move isn't
24 on there," with some question marks. The defendant
25 responded (as read), "Course not." I responded (as

1 read), "Oh, my God." And then I said (as read), "I
2 almost," and an emoji with somebody throwing up." The
3 defendant responded (as read), "It was a peck, anyway.
4 I kiss Kerri and gay Jeff, too." I responded (as
5 read), "Yeah. Weak. I agree."

6 Q Now, as far as cameras at Mr. O'Keefe's house,
7 is that something that you were aware was there prior
8 to that conversation with the defendant?

9 A No, not that I recall.

10 Q And if I could turn your attention to the next
11 page, 79, and ask you to read from that, sir?

12 A The defendant said (as read), "LOL. Funny."
13 I responded (as read), "So now he is jealous of me?"
14 The defendant said (as read), "No! I told you, he
15 likes you a lot." I said (as read), "Which makes this
16 worse?" The defendant said (as read), "You said or did
17 something at the bar last week. And he goes (as read),
18 "I like Brian more and more." I responded (as read),
19 "I think he's a good dude too." The defendant
20 responded (as read), "Yeah, he is." I responded (as
21 read), "Funny. What's your end game? What do you want
22 from me? You will just confuse the," it should say,
23 "shit out of yourself because I'm a lot of fun"

24 Q Now, sir, the "he" that you're referring to in
25 those text communications, who was that, just for

1 clarity?

2 A John O'Keefe.

3 Q And if I could direct your attention to page
4 84 and ask you to read from that page, sir.

5 A I said (as read), "It was fun." The defendant
6 said (as read), "I've complimented you today, too,"
7 with a couple of exclamation points and then some type
8 of emoji. I said (as read), "And kicked my nuts." The
9 defendant said (as read), "OMG. How?" I responded (as
10 read), "If I had more notice, I would have grabbed a
11 drink somewhere. So I'm all set with" -- and then I
12 said in quotations, "'That's' fine, but I am not asking
13 again.'" The defendant said (as read), "Well, it was
14 7:00 p.m., and I'm super cool. So right? Now I'm
15 asking again," with some type of I think it's a smiley
16 face. I responded (as read), "Coming to your house
17 would have been bad for the both of us. For starters,
18 you wouldn't have wanted me to leave." The defendant
19 responded (as read), "Now equals not. That sounds
20 good." I responded (as read), "That's trouble." The
21 defendant said (as read), "Why?"

22 Q And if I could direct your attention to page
23 90 and ask you to read from that, sir.

24 A Nine zero?

25 Q Nine zero. Yes.

1 A The defendant said (as read), "No. I'm
2 busting your chops. It's okay." I responded (as
3 read), "No. You are sensitive. Nice try. You don't
4 think if I came over for a drink we would have gotten
5 carried away?" And defendant said (as read), "YOU," in
6 capital letters, "said you were adaptable and tons of
7 fun. I took that for an invite for an invite." And I
8 responded (as read), "Oh, okay." The defendant
9 responded (as read), "I'm 42. I know what happens when
10 you invite someone over for a drink." I responded (as
11 read), "You're the master of avoidance. So you think I
12 would just give it?" I meant to say give it up. The
13 defendant responded (as read), "I have been a lot in my
14 life. I have a little bit of carpe diem mindset," and
15 then said, "been through."

16 Q And if I could direct you to the next page,
17 91, sir?

18 A The defendant said (as read), "What am I
19 avoiding? I'm not afraid to be direct." I responded
20 (as read), "Some of my questions." The defendant
21 responded (as read), "Okay. Which. Ask again." I
22 said (as read), "Nope. Trix are for kids." The
23 defendant responded (as read), "I'm pretty sure we
24 would have hooked up." I responded (as read), "Okay."
25 The defendant said (as read), "I can't say that?" I

1 said (as read), "Of course you can." The defendant
2 said (as read), "Did I miss any other questions, sir?
3 Probably. Are you having a drink right now?" The
4 defendant said (as read), "Yeah, on my second." I said
5 (as read), "Show me what you got."

6 Q And if I could direct your attention to page
7 99 and ask you to read from that, sir.

8 A The defendant said (as read), "None of that is
9 true! I'm not talking to other guys, and I have issues
10 with John and things are far from perfect. You just
11 happen to know about him b/c," I guess because, "we all
12 hang out at the same bar. I'm sure you talk to other
13 girls. That's what single people do. I'm not married.
14 Neither are you. Neither is John." I responded (as
15 read), "Was that your attempt at a lecture or deductive
16 reasoning? What do you want from me?" The defendant
17 said (as read), "That's just how I think/feel. You
18 don't need to approve. I've already answered that last
19 question a couple of times I think." I responded (as
20 read), "I'm not judging you, never have, never will."
21 The defendant responded (as read), "You shouldn't. I
22 don't know what your private life is about nor is it my
23 business."

24 Q Thank you, sir. If I could now direct you to
25 page 102 and ask you read from that.

1 A The defendant said (as read), "My only," I'm
2 assuming, "point is that there is a difference between
3 being married to someone and dating them. And we have
4 no intention of ever getting married. The point of
5 dating is not to get tied down if you're not confident.
6 You should be, in my mind, anyway. The first two, but
7 I don't care too much about the other girl." I
8 responded (as read), "Okay. So he is cool with you
9 dating other people?" The defendant responded (as
10 read), "And I'm not -- I happy per se, just realistic
11 that there's cracks and it's far from perfect. I doubt
12 it. If he's seeing someone else, I wouldn't want to
13 know either way. He probably feels the same way. And
14 you probably feel that way about whoever you hook up
15 with. I think that's normal." I responded (as read),
16 "Okay." The defendant said (as read), "You don't agree
17 with me??"

18 Q If I could direct your attention to page 107
19 and ask you to read from that, sir.

20 A The defendant said (as read), "At a bar?" I
21 responded (as read), "I wasn't suggesting anytime soon.
22 I know you're with your friend. I meant my house,
23 probably after 8:00." The defendant said (as read),
24 "Probably after 8:00." I responded (as read), "Okay.
25 If you don't wanna, that's fine. No pressure." The

1 defendant responded (as read), " I will, a drink." It
2 looks like I tapped the bubble with a question mark. I
3 then said (as read), "What do you drink? Are you out
4 now?" The defendant responded (as read), "Sorry. I'll
5 drink whiskey if that's what you're having." I
6 responded (as read), "Haha. Send me a pic of you two."

7 Q Now, you had testified earlier about some
8 occasion prior to the 28th when the defendant had come
9 over your house is West Roxbury, correct?

10 A Yes.

11 Q And this page that you just read, as well as
12 some of the successive pages after that, is that sort
13 of arranging for that to occur after she goes out or
14 leaves from a friend's out in Boston?

15 A I believe she was out with a friend that night
16 in Boston, a female friend. Yes.

17 Q And that evening when she came over your
18 house, about how long was she there for?

19 A Not long.

20 Q And so what happens when she arrived or what,
21 if anything, did the two of you talk about?

22 A It was kind of more of this. It was kind of a
23 -- it wasn't an interrogation. It was a face-to-face
24 version of trying to suss out and vet like what is this
25 all about. Again, I mean, you know, I'm not proud of

1 these text messages. It is what it is. I take
2 responsibility for them. But, you know, John was a
3 friend at the same time and I certainly wasn't -- if
4 they were at the end of the relationship, they were at
5 the end of their relationship. But I wasn't going to
6 have somebody utilize me, weaponize me, against
7 somebody that I liked. And it was just a weird
8 experience. I don't think either one of us finished a
9 drink. Like I said, it was this type of like what is
10 this all about, and then she left. I think I might
11 have asked her to text me when she got in so I knew she
12 got home.

13 Q Now, that evening or at any other point, at
14 any other point in your friendship or your
15 relationship, whatever or however you want to term it,
16 was there any other sort of intimate contact beyond
17 what you've described occurring as she walked you out
18 that night when you were over Mr. O'Keefe's house for
19 the Patriots game?

20 A Are you asking if she ever kissed me again?

21 Q I'm asking you if there was any kissing, any
22 sexual relationship, anything at all between yourself
23 and the defendant.

24 A Absolutely not. And, referring to at my
25 residence when she stopped by, it was just I was very

1 uncomfortable. It was just an uncomfortable situation.
2 It was just a weird vibe. That's how I can describe
3 it.

4 Q And, lastly, sir, lastly as it applies to
5 this, turning your attention to the last page, No. 118,
6 there's a couple different dates from the middle to the
7 bottom of the page; is that correct?

8 A There is.

9 Q And if I could ask you to start reading from
10 where it says, Sunday, January 23rd, 9:40 p.m.?

11 A So Sunday, January 23rd at 9:40 p.m., the
12 defendant texted me (as read), "Phone works," and then
13 an emoji with arrows going like both ways. And I
14 responded (as read), "Thought you were all set?" The
15 defendant said (as read), "With talking? No." I said
16 (as read), "Hmmm. Are you sure." And she didn't
17 respond. And I believe I said -- that was it for the
18 23rd. I'm sorry.

19 Q So then the next date that any text
20 communication was sent between the two of you would
21 have been Friday, 11:32 p.m.; is that correct?

22 A That's correct. That would have been when we
23 were at the Waterfall.

24 Q And, again, what does the text say there?

25 A (As read), "Ummmmmm, well."

1 Q And that's from you to her; is that correct?

2 A Yes.

3 Q And then the next text communication is the
4 following day or Saturday, the 29th, at 11:54 a.m.; is
5 that correct?

6 A Yes.

7 Q And who is speaking in that communication and
8 what it said?

9 A That is the defendant. And the defendant said
10 (as read), "John died."

11 Q And did you respond to that at all?

12 A No.

13 Q And did you have any other communication with
14 Ms. Read following receiving that text message on
15 January 29th?

16 A No, I have not.

17 Q Thank you, sir.

18 Ms. Gilman, you can take it.

19 Now, sir, if I could -- just a couple more
20 questions for you. Taking you back on the early
21 morning of January 29th when you had come from the
22 Waterfall to Fairview and then you were leaving from
23 Fairview. If I could turn sort of that portion into
24 your mind.

25 When you're pulling away from the residence,

1 the period of time that you were talking about as far
2 as the plow being down and scraping a little bit on the
3 ground, do you recall that?

4 A I do.

5 Q About how much distance are we talking about
6 with respect to that?

7 A Distance? Less than a foot, I would say. I
8 mean, it's real clear. I heard it.

9 Q And then, as far as when you -- are you
10 familiar with an area in the front of Mr. Albert's
11 property at 34 Fairview where there is a flagpole and a
12 fire hydrant?

13 A I do know where that is, yes.

14 Q And, as you drove by the house that evening,
15 where were you in relation to that part of the yard?

16 A When I drove away?

17 Q Yes.

18 A I might have been in the -- I was in the
19 street. I pulled away. So that area would be on my
20 passenger side.

21 Q And so more what I'm asking, sir, is as you
22 pulled away, did you pull away alongside the curb? Did
23 you pull to the middle of the street or where did you
24 direct the vehicle to go as you were pulling away?

25 A Like any other time, I pulled away from the

1 curb. And that's kind of a -- I mean, it's a one-lane
2 street, so to speak, and nobody was coming towards me.
3 So I just pulled out into the middle -- into the street
4 and drove away.

5 MR. LALLY: If I may have a moment, Your
6 Honor?

7 THE COURT: Yes.

8 MR. LALLY: I have no further questions of
9 this witness, Your Honor.

10 THE COURT: All right. I'll see you for one
11 minute over here at sidebar. Jurors, feel free to
12 stand and stretch.

13 (Whereupon, there was a sidebar conference as
14 follows:)

15 THE COURT: I'm sorry. You're not getting
16 into the proffer, are you?

17 MR. JACKSON: I was going to, yes. At some
18 point, I'm going to ask him about the proffer, and
19 I was going to ask to approach first. I think it's
20 exceedingly important that the jurors understand
21 that he --

22 THE COURT: Do we know anything about that
23 proffer?

24 MR. JACKSON: I know that it was --

25 MR. LALLY: I don't think the proffer means

1 what counsel thinks it means.

2 THE COURT: Well, the point is, he's
3 represented by counsel, right? So we're going to
4 have a voir dire or at least -- unless you can show
5 me that that proffer has nothing to do with his
6 testimony here, I'm not letting it in.

7 MR. JACKSON: The only thing -- I'll ask him
8 about the -- it certainly has a lot to do with his
9 testimony here because the proffer was obviously
10 the subject matter. The only question is do I
11 style it as a proffer. I wasn't going to
12 ultimately say, did you give an interview or a
13 statement and in that interview you knew that you
14 were testifying under a grant of immunity. If the
15 Court doesn't want me to, then I will follow the
16 Court's instructions.

17 THE COURT: Not with that foundation. And I
18 know you're in a hurry to get this done, and I
19 don't want that to interfere with anything. Is his
20 lawyer here today, do we know?

21 MR. JACKSON: He's right here. That's a
22 question I'm going to ask him.

23 THE COURT: Oh, about his lawyer?

24 MR. JACKSON: Right.

25 THE COURT: So not until after lunch and he's

1 got a right to talk to his lawyer about this. I
2 see a hearing here at sidebar. It's not as simple
3 as we've said. And, from what you said is the
4 foundation, I don't see any. So I need to explore
5 a little more and --

6 MR. JACKSON: It's not a big part of my cross.

7 THE COURT: All right. So you decide.

8 MR. JACKSON: I'll decide on the fly. I
9 certainly won't do anything without approaching you
10 first.

11 THE COURT: Okay.

12 MR. JACKSON: Is it possible that we could do
13 a 45-minute lunch instead of an hour?

14 THE COURT: I was thinking that. So let's see
15 where you go.

16 MR. JACKSON: Thank you.

17 (Whereupon, the sidebar conference concluded.)

18 THE COURT: All right. Mr. Jackson, whenever
19 you're ready.

20 MR. JACKSON: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. JACKSON:

23 Q Who did you come here today with, Mr. Higgins?

24 A Who did I travel to the courthouse with?

25 Q Who did you meet here?

1 A An attorney. My attorney.

2 Q Is there a reason that you felt compelled to
3 bring an attorney with you for your testimony as a
4 witness in a homicide investigation?

5 MR. LALLY: Objection, Your Honor.

6 Q Or a homicide trial, I should say.

7 THE COURT: Sustained.

8 BY MR. JACKSON:

9 Q You brought your attorney with you, who is
10 sitting right behind you, correct?

11 A That is not my attorney.

12 Q Oh, I'm sorry. I thought you were his
13 attorney. My mistake. Where is your attorney?

14 A I don't know. He might be in the courthouse.

15 Q Is he in the building?

16 A I don't know where he physically is right now.

17 Q Okay. Without telling me anything that you
18 said to your attorney, did you meet with him this
19 morning before your testimony?

20 A Yes.

21 Q Did you meet with him during the break?
22 Again, don't tell me what you talked about. But did
23 you meet with him during the break, when we took a
24 break a few minutes ago?

25 A Yes, I did.

1 Q Okay. And obviously, the subject matter,
2 again, without telling me any communication, the
3 subject matter was your testimony here today, correct?

4 A No.

5 Q How many conversations have you had with
6 Mr. Lally about your testimony, your proposed testimony
7 in anticipation of you testifying today?

8 A One.

9 Q When was that?

10 A That was on Monday.

11 Q How long was that conversation?

12 A I would say under an hour and a half.

13 Q In person or over the phone?

14 A In person.

15 Q Where was that conversation?

16 A That was at the D.A.'s office.

17 Q Who else was there?

18 A My attorney, a victim witness advocate. I
19 believe her name is Kristen Collins. A.D.A.
20 McLaughlin, A.D.A. Lally and Lieutenant Brian Tully
21 from the Mass. State Police.

22 Q Anybody taking notes?

23 A I did not. I don't know if anybody was taking
24 notes.

25 Q Well, you were sitting there, watching

1 Lieutenant Tully. Did he take notes?

2 A Not that I saw, no.

3 Q So you had an hour-and-a-half-long
4 conversation with the prosecution team and a police
5 officer witness, and you're telling me that you did not
6 see anybody taking a single note down; is that right?

7 A That's correct. I did hand something to
8 Lieutenant Tully, but he didn't take any notes in
9 reference to what I handed him.

10 Q What did you hand him?

11 A I handed him a piece of mail that I got at my
12 residence.

13 Q Anything having to do with this case?

14 A Oh, I believe so.

15 Q Was that turned over to Mr. Lally?

16 A No. I turned it over to state police.

17 MR. JACKSON: Your Honor, may we approach for
18 a second?

19 THE COURT: Yes.

20 (Whereupon, there was a sidebar conference as
21 follows:)

22 MR. JACKSON: I have no idea what that is.

23 MR. LALLY: He received a harassing photograph
24 in the mail.

25 MR. JACKSON: A what?

1 MR. LALLY: A harassing photograph in the
2 mail.

3 MR. JACKSON: What kind of photograph?

4 MR. LALLY: I don't know exactly what it was,
5 but it was in reference to along the lines of
6 threats in regards to his testimony. So you may
7 want to stay away from it.

8 MR. JACKSON: My question -- I will. My
9 question is why don't I know about that? Why would
10 I have to find that out in my fourth question to
11 this witness on the stand? I am becoming
12 frustrated at the revelations. Every single
13 witness has had multiple conversations with the
14 Commonwealth that I find out on that podium. It is
15 very, very debilitating and extraordinarily unfair.

16 THE COURT: What do you want me to do about
17 it?

18 MR. JACKSON: Nothing. In this instance,
19 Judge, it's certainly not your fault. And I don't
20 want to touch it. But I certainly cannot be seen
21 to have opened a door that I didn't know existed.

22 THE COURT: So Mr. Lally is not allowed to get
23 into it.

24 MR. JACKSON: Okay.

25 THE COURT: Unless you are going to pursue it?

1 MR. JACKSON: No, no. But I would ask that
2 the Commonwealth be instructed if you have
3 information that you gleaned from a witness during
4 the course of your prep, I should have it. Every
5 single statement of a witness needs to be disclosed
6 and it's not being disclosed.

7 MR. LALLY: It is being disclosed, Your Honor.
8 There was no statement that is material or relevant
9 to this case. Whether or not he received any kind
10 of threatening or harassing photograph has not
11 bearing on his testimony.

12 THE COURT: Can you get it here at lunch?

13 MR. LALLY: Probably. Mr. Yannetti, I have a
14 question for Mr. Jackson. Do you want it brought
15 here at lunch?

16 MR. JACKSON: No. I don't need it.

17 THE COURT: Okay. So let's go.

18 (Whereupon, the sidebar conference concluded.)

19 BY MR. JACKSON:

20 Q Other than that piece of mail that you handed
21 to Lieutenant Tully, was there any other exchange of
22 documents or anything like that? Were you shown
23 anything in anticipation of your testimony?

24 A The only thing I can be recalled showing was
25 as photograph of the exterior of 34 Fairview Road in

1 Canton.

2 Q What about the text messages that you just
3 went over extensively? Were you shown those?

4 A I was shown a pile of papers and I was advised
5 that those text messages were going to be -- they were
6 put into another format. So they were easier to read.

7 Q And these are the screenshots that you just
8 described on the exhibit?

9 A Well, as I said, he showed me the stack and
10 said they were the text messages. They're in a
11 different format but I'm assuming that's what they
12 were.

13 Q What was your assignment with the ATF back in
14 2022?

15 A I was assigned to the Bridgewater field
16 office, but I was full time with the United States
17 Marshal Service, doing fugitive apprehension.

18 Q And where were you physically officing out of?

19 A Well, I continued to maintain the office at
20 Canton P.D.

21 Q Okay. But, to be clear, you were a federal
22 officer, not a Canton police officer on some sort of a
23 task force with Canton P.D., correct?

24 A No. I was not on a task force with Canton
25 P.D.

1 Q But you did have an office at Canton P.D.
2 based on a personal relationship that you had with the
3 chief; correct? He gave you this office as a courtesy;
4 is that right?

5 A So if I can explain?

6 Q Well, that's yes or no. Was it provided as a
7 courtesy?

8 A Well, working partnership, I would say.

9 Q And you've been asked that specific question
10 in a prior hearing, correct?

11 A Yes.

12 Q In June of 2023, right?

13 A Yes.

14 Q And you explained, look, there was a personal
15 relationship that I had with Chief Berkowitz?

16 A I did.

17 Q It was born out of --

18 A Tragedy.

19 Q -- a family tragedy that he was aware of?

20 A A horrible tragedy.

21 Q Correct?

22 A Yes.

23 Q And, based on that personal friendship and
24 that personal relationship, he offered you the
25 convenience of officing out of Canton P.D.?

1 A I would say that's a good summary.

2 Q And, in addition to just having an office
3 there, you also had a keycard access, correct?

4 A I did, to get in and out.

5 Q What was the name that you used? You said it
6 was a proxy card?

7 A I think it's called -- I think in the IT
8 world, it's probably called a proxy card. That's what
9 I know it to be.

10 Q So you had both a physical office and full
11 access to Canton P.D., all based on the friendship and
12 relationship and convenience, well, the friendship and
13 relationship you had with Chief Berkowitz and the
14 convenience that he wanted to give you for having that
15 office there, correct?

16 A No. I wouldn't say "full access." I had
17 access to certain areas within the department.

18 Q Well, you certainly had access to and from
19 your office?

20 A Yes.

21 Q You had ingress and egress to the Canton
22 Police Department?

23 A Yes.

24 Q You could go in and out of the sally port?

25 A I could.

1 Q You could go upstairs to Chief Berkowitz's
2 office?

3 A Yes.

4 Q You could go downstairs to the dispatch area
5 which is on the first floor, correct?

6 A Yes.

7 Q And then you could go out to the sally port,
8 into the sally port, across that garage, those two bay
9 doors, at your leisure?

10 A Well, that would exclude the evidence room,
11 the arms room and places like that. I didn't have
12 access to those places.

13 Q Right. But the places that I just mentioned
14 you did have access to?

15 A Yes. Absolutely.

16 Q You'd had that office for what? Back in
17 January of 2022, you probably had that office for more
18 than, what, three years?

19 A I would estimate probably sometime around '18,
20 2018.

21 Q 2018. Okay. Not 18 years. 2018?

22 A No. 2018. I'm sorry.

23 Q Okay. So maybe close to four years?

24 A Yes.

25 Q I want to turn your attention, Mr. Higgins, to

1 January 28/January 29, 2022. By the way, I should ask
2 another foundational question.

3 Are you currently still at ATF?

4 A Am I employed by ATF?

5 Q Correct.

6 A Yes, I am. I'm a special agent. Yes.

7 Q What is your current assignment?

8 MR. LALLY: Objection.

9 THE COURT: Is that something you're free to
10 discuss?

11 THE WITNESS: I'm assigned to division
12 operations at this time.

13 BY MR. JACKSON:

14 Q Okay. What does that mean?

15 A That's --

16 Q You're taken out of the field?

17 A Was I taken out of the field? Yes.

18 Q You're no longer in the field?

19 MR. LALLY: Objection, Your Honor. Move to
20 strike.

21 THE COURT: Sustained. Let's move on. You
22 may be able to come back to this.

23 MR. JACKSON: Thank you, Your Honor.

24 BY MR. JACKSON:

25 Q I want to turn your attention now to January

1 28/29 of 2022. Do you recall those dates?

2 A I do.

3 Q And you've been living with those dates for
4 the last couple of years?

5 A Like a nightmare.

6 Q John O'Keefe's body was found outside your
7 friend, Brian Albert's, house on the morning of January
8 29th, 2022, correct?

9 A Yes.

10 Q You've previously testified that on January
11 28th, you had gone to New York for this memorial
12 service, correct?

13 A Funeral service. Yes.

14 Q The funeral service. Not the memorial? You
15 separate the two?

16 A Well, the wake would be the night before. The
17 funeral is -- I call them the services. It wasn't a
18 memorial. A memorial to me would be more like an
19 annual thing. This was the services.

20 Q Understood.

21 A I just want to be clear.

22 Q So you went with Brian Albert, Kevin Albert
23 and Eddie Hernandez; is that right?

24 A I traveled down there myself, but I met up
25 with them.

1 Q To go to the services?

2 A Yes.

3 Q Is it fair to say that you and Brian Albert
4 and Kevin Albert sort of run in the same social and
5 professional circles?

6 A I mean, without speaking for anybody else, I
7 think we know a lot of the same people.

8 Q You go to some of the same holiday parties,
9 for instance?

10 A Yes.

11 Q You go to some of the same events, whether
12 they are law enforcement events or otherwise?

13 A Retirement parties. Yes. Things like that.

14 Q You might meet up at a bar and have a social
15 drink together?

16 A Yes.

17 Q You might share a meal together, correct?

18 A Yes.

19 Q And you would agree that you particularly are
20 pretty well connected to the Canton law enforcement
21 community?

22 A Could you qualify that, explain that?

23 Q You know quite a few cops, right?

24 A Well, it's a small department. So I do know
25 everybody in the building in some capacity.

1 Q Okay. So my question is that you know quite a
2 few cops in Canton?

3 A I do.

4 Q You're pretty good friends with, as a matter
5 of fact, maybe best friends, with the chief of police,
6 former chief of police, Kenny Berkowitz, correct?

7 A Yes.

8 Q You know Brian Albert. He's a Boston police
9 officer?

10 A Yes.

11 Q You know his brother and work with his brother
12 at Canton P.D., correct?

13 A Yes.

14 Q So it's fair to say, back to my original
15 question, you're relatively well connected in the law
16 enforcement community, the fabric of that community, in
17 Canton; is that right?

18 A Well, I think that comes with working with
19 people. Yes.

20 Q Is that yes or no?

21 A Yes.

22 Q Okay. As a matter of fact, you've been given
23 a personal toast at one of these events, these
24 retirement events, et cetera, correct?

25 A Chief Berkowitz, yes.

1 Q And, during the course of that toast, you even
2 said, if you want to hide a body, Kenny Berkowitz is
3 your man, correct?

4 THE COURT: Did you say that? Did you say
5 that?

6 THE WITNESS: I don't recall that.

7 BY MR. JACKSON:

8 Q You don't remember telling that joke in front
9 of a roomful of folks?

10 A I don't.

11 Q If you want to hide a body, Kenny Berkowitz is
12 your man?

13 A I don't.

14 Q Okay. You will agree that some of your
15 closest friends are some of the more powerful people in
16 Canton in terms of politics and law enforcement, right?

17 MR. LALLY: Objection.

18 THE COURT: Ask it differently.

19 BY MR. JACKSON:

20 Q At that same retirement dinner, there were
21 members of the D.A.'s office there, correct?

22 A Yes.

23 Q As a matter of fact, the D.A., Michael
24 Morrissey, was there?

25 A I believe he was at one point.

1 Q All right. And that was the same event that
2 you gave either a keynote speech or some sort of a
3 speech for Chief Berkowitz's retirement; is that right?

4 A Yes.

5 Q How long have you known Brian Albert
6 specifically?

7 A I think I had some interaction with him when I
8 was on the Cambridge Fire Department in my capacity in
9 fire investigations. And then I would say pretty much
10 through my entire career at ATF, you know, I came into
11 contact with Brian.

12 Q Give me a number of years.

13 A Well, I've been with ATF now for 15 years.
14 I've probably known him at least that whole time.

15 Q You'd say that you have both a social and
16 professional working relationship with him?

17 A I would say yes. He's a friend.

18 Q You frequently drink together?

19 A We have drank together. I wouldn't say
20 frequently. But yes. We have drank together.

21 Q Break bread together, have meals together?

22 A Absolutely. Had lunch.

23 Q As a matter of fact, you were asked at a prior
24 hearing whether or not you could put a number on the
25 number of times that you've had drinks with Brian

1 Albert and you said somewhere around 50 or something
2 like that? Actually, you said under 50?

3 A Under 50. I think I might have said 30.

4 Q And that was in two years, correct?

5 A Yes.

6 Q So not under 50 in the entirety of your
7 relationship, your 15-year relationship with Brian
8 Albert. Literally in the prior two years when you gave
9 your testimony in June of 2023, in those two years, you
10 met up with him and had drinks under 50 times?

11 A Is that a question?

12 Q Yes.

13 A Could you rephrase it?

14 Q Sure. Is it true that you testified, "Answer:
15 I mean, in two years, I mean, maybe under 50"? That
16 was your testimony, too, how often you socialized with
17 Brian Albert, correct?

18 A So we socialized more when I started working
19 with his unit.

20 Q Okay. So my question is --

21 A I don't know the exact number. But yes. We
22 socialized. Absolutely.

23 Q That's all I was getting at.

24 A Okay. That's fine. I mean, there's no
25 secrets here. He's my friend.

1 Q Well, Mr. Higgins, let me ask the questions.
2 I get it.

3 A That's fine.

4 Q I get it. You also know Brian Albert well
5 enough to know what his relationship is with, for
6 instance, with the other guy that you traveled back
7 from New York with, Eddie Hernandez?

8 A I do know Eddie Hernandez. I actually know
9 Eddie the longest out of everybody.

10 Q So you knew Eddie or Officer Hernandez before
11 you ever knew --

12 MR. LALLY: Objection.

13 THE COURT: Ask the question.

14 BY MR. JACKSON:

15 Q You knew Officer Hernandez before you ever
16 knew Brian Albert?

17 A Yes.

18 Q You knew him before you even knew Kevin
19 Albert?

20 A Yes.

21 Q And you're aware that there was a physical
22 altercation --

23 MR. LALLY: Objection, Your Honor.

24 BY MR. JACKSON:

25 Q -- between Brian Albert and Eddie Hernandez

1 that you're aware of, correct?

2 THE COURT: The objection is sustained.

3 BY MR. JACKSON:

4 Q Are you aware that Brian Albert had gotten
5 into a fistfight with Eddie Hernandez?

6 MR. LALLY: Objection.

7 THE COURT: Sustained.

8 BY MR. JACKSON:

9 Q Were you at a Christmas party when that
10 happened?

11 MR. LALLY: Objection, Your Honor.

12 THE COURT: Sustained as to that form. You
13 can be specific.

14 BY MR. JACKSON:

15 Q Have you ever been in an event with Brian
16 Albert and Eddie Hernandez and seen them fight?

17 MR. LALLY: Objection.

18 THE COURT: When?

19 BY MR. JACKSON:

20 Q Christmas, five years or so before 2022.

21 THE COURT: The objection is sustained.

22 BY MR. JACKSON:

23 Q You do know that Brian Albert has a reputation
24 for being a fighter?

25 MR. LALLY: Objection.

1 THE COURT: Sustained.

2 BY MR. JACKSON:

3 Q You were asked in a formal interview, do you
4 recall -- I want to make sure I'm clear about some of
5 your prior statements.

6 You had a formal interview with some folks
7 prior to your testimony at a prior proceeding. Do you
8 understand what I'm talking about?

9 A I'm tracking.

10 Q Okay. At the formal interview, which is what
11 I'm going to call that --

12 A Okay.

13 Q -- the formal interview, you were asked about
14 Brian Albert and his reputation, were you not? Yes or
15 no.

16 A Yes.

17 Q You indicated in that formal interview that
18 even Chief Berkowitz was, quote --

19 MR. LALLY: Objection.

20 BY MR. JACKSON:

21 Q -- "a little afraid of Brian Albert"?

22 MR. LALLY: Objection.

23 THE COURT: So that is -- the objection is
24 sustained. That's stricken. I'll see you at
25 sidebar.

1 (Whereupon, there was a sidebar conference as
2 follows:)

3 THE COURT: So I'll hear you, Mr. Lally.

4 MR. LALLY: Your Honor, I don't see how --
5 first of all, the wrong witness. Secondly, as far
6 as whatever -- a number of different things. So
7 it's attempting to attack character and suggest
8 some sort of bad act of a witness who's not even
9 testifying on the stand when these questions
10 weren't asked of the witness when he was here and
11 when he was testifying on the stand. That was the
12 subject of a motion in limine that was allowed. It
13 was completely inappropriate, completely
14 irrelevant, and I'd ask for a limiting instruction
15 to be given to the jury at this time in regard to
16 this.

17 THE COURT: What type of limiting instruction?

18 MR. LALLY: Questions are not evidence because
19 essentially what counsel is doing is testifying
20 from his questions as to the facts that these
21 incidents allegedly occurred.

22 THE COURT: But you know he can't testify.
23 Even Chief Berkowitz knew that his reputation --
24 and you know better than that, and I'm not going to
25 give this instruction though it's warranted.

1 Tell me why you -- that question is certainly
2 not admissible, but tell me why you think this line
3 of questioning is. I need you to make your offer
4 of proof.

5 MR. JACKSON: Sure. I believe that it's
6 relevant through this witness because he knows of
7 the reputation for violence. He knows the
8 reputation for violence of Brian Albert, Sr. He's
9 known Brian Albert, Sr. for more than 15 years. He
10 knows Eddie Hernandez, who I have information and
11 he has information he got into a physical
12 altercation with Brian Albert and was beaten up by
13 Brian Albert. He is aware that his best friend,
14 Kenny Berkowitz, was afraid of Brian Albert
15 physically.

16 And the reason all of that is relevant is
17 because Brian Albert was in the home of a Boston
18 police officer who we have evidence before this
19 jury was involved in or had injuries consistent
20 with the physical altercation. And that goes to a
21 lack of, again, twofold, a lack of investigation by
22 the Commonwealth, by their investigators, by the
23 Massachusetts State Police, and it also goes to a
24 third-party culpability that is an undefined third-
25 party culpability that is between and among Brian

1 Albert, Colin Albert and this witness.

2 THE COURT: Okay. So one of the reasons that
3 third-party culprit evidence is very limited is so
4 that it doesn't put the Commonwealth in the
5 position you're putting him in right now. This is
6 far too attenuated. If it had been closer than
7 five years prior to this date, I'd have given it to
8 you. It's too remote. Okay?

9 MR. JACKSON: I'll move on.

10 THE COURT: Okay.

11 MR. LALLY: Thank you.

12 (Whereupon, the sidebar conference concluded.)

13 MR. JACKSON: May I inquire?

14 THE COURT: Yes.

15 MR. JACKSON: Thank you, Your Honor.

16 BY MR. JACKSON:

17 Q You're also relatively close friends, in
18 addition to being close friends with Brian Albert,
19 you're also relatively close friends with his brother,
20 Kevin, correct?

21 A I am.

22 Q Kevin Albert is a detective with the Canton
23 Police Department; is that right?

24 A Yes.

25 Q And you've worked in the same physical office

1 with him for a number of years?

2 A Physical building.

3 Q Physical building. That's a better way to put
4 it.

5 A It's different.

6 Q Is that right?

7 A Yes.

8 Q And it's fair to say that you've consulted
9 with Kevin Albert on certain of his cases
10 professionally; is that right?

11 A I've assisted.

12 Q And you've also socialized with him, shared
13 drinks with him --

14 A That's right.

15 Q -- gone out to bars with him; is that right?

16 A Yes, I have.

17 Q It's fair to say that you know the Albert
18 family relatively well?

19 A I would say I know Brian and Kevin the best.

20 Q On January 28th, you drove your Jeep Wrangler
21 to the Hillside bar to meet up with Brian Albert for
22 drinks, correct?

23 A I did.

24 Q You said you drank three to four whiskey sodas
25 at the Hillside; is that right?

1 A It would be Jameson and ginger, not whiskey
2 soda.

3 Q My mistake. Jameson and ginger. Jameson is
4 an Irish whiskey?

5 A It is.

6 Q And ginger is ginger ale?

7 A Yes.

8 Q Okay. What was Brian Albert drinking?

9 A If I was to guess, a beer.

10 Q I don't want you to guess. Do you know what
11 he was drinking?

12 A No, I don't.

13 Q He was drinking something?

14 A He was drinking something.

15 Q Okay. Alcoholic?

16 A Yes.

17 Q You two were probably going round for round;
18 in other words, finish a drink, get another round for
19 the two of you, finish it, get another round?

20 A I don't think we -- no. I wouldn't say we
21 were going round for round.

22 Q So he was nursing one beer while you had four
23 Jamesons?

24 A Well, it would have taken -- say that again?

25 Q He was nursing one beer while you had four

1 Jamesons when he sat there?

2 A No. He was probably -- maybe he had more
3 beers than I had Jamesons, is more what I would say.

4 Q Okay. So maybe he had five or six beers while
5 you had four Jamesons?

6 A I'm not going to put a number on it because I
7 don't know.

8 Q But it was more?

9 A More than what?

10 Q More than you?

11 A Maybe. He wasn't there that long.

12 Q Well, it doesn't take that long to drink a
13 beer, does it, I mean, if you're sort of thirsty and in
14 a hurry?

15 A Is that a question?

16 Q Everything I say up here is a question.

17 A Okay.

18 Q Just presume that.

19 A All right.

20 THE COURT: Well, that wasn't. So let's have
21 questions.

22 MR. JACKSON: Touche.

23 THE COURT: Yes, Mr. Higgins, that was a
24 question.

25 BY MR. JACKSON:

1 Q All right. Let me put a question mark at the
2 end of that.

3 A Okay.

4 Q Is it your memory that Brian Albert had more
5 drinks than you did when you had those three to four
6 Jamesons and gingers?

7 A To be honest with you, I wasn't keeping track.

8 Q He left Hillside and you stayed, correct?

9 A For a short time, yes.

10 Q You later changed your mind and ultimately
11 decided to go to the Waterfall. You finished whatever
12 you're eating or drinking and decided to go over to the
13 Waterfall, right?

14 A Yes, because I'm always saying I'm going to
15 show up, and then I kind of do the Irish exit. So I
16 decided it was a long day. It was an emotional day.
17 And I decided to join them.

18 Q Did you drive your vehicle over there?

19 A Yes, I do.

20 Q After having as many as four whiskeys?

21 A Yes.

22 Q Brian Albert. Did he drive himself?

23 A I didn't see him. I dropped him off in Boston
24 P.D. district, down there in Charlestown. And I'm
25 assuming he drove back towards that way to meet me.

1 Q He wasn't with anybody else?

2 A Not that I know of.

3 Q And so he was drinking at the Hillside bar and
4 then got in his car and drove over to the Waterfall, as
5 well?

6 A I didn't see him drive over, but I assume
7 that's what he did. Yes.

8 Q You went to John O'Keefe's house. I'm going
9 to shift gears for a second. You went to John
10 O'Keefe's house at some point to watch the Patriots
11 game on January 16th, right?

12 A Yes.

13 Q That was the time when you indicated that when
14 you left, Karen gave you a kiss goodbye, correct?

15 A Yes.

16 Q It's safe to say that that was not some hot,
17 passionate, long kiss, but you think it was more than
18 just a friendly peck, correct?

19 A I wouldn't describe it as a peck. I'd
20 describe it as more than friends. It was a kiss.

21 Q Well, you did describe it as a peck, didn't
22 you?

23 A When?

24 Q When you texted Karen Read, and she said, it
25 was just a peck. And then you texted back, I agree?

1 A Figure of speech.

2 Q Or the truth, right?

3 A Figure of speech.

4 Q After that incident, it's safe to say, we've
5 just gone through a number of them, you exchanged
6 flirtatious texts with Ms. Read; is that right?

7 A Is the incident we are referring to when she
8 kissed me?

9 Q No. I'm saying after that. After that
10 incident -- yes. After the Patriots game.

11 A Okay. Yes.

12 Q You exchanged flirtatious texts --

13 A We did.

14 Q -- with Ms. Read?

15 A I did.

16 Q And that was over the course of a few weeks, a
17 couple of weeks, but just nine days; is that right?

18 A So it was between January 12th and I would say
19 before the 28th because the 28th she didn't respond and
20 the 29th she sent that last text that John died.

21 Q Well, actually, you've looked at the text,
22 right?

23 A I have.

24 Q You just looked at the last couple of texts,
25 correct?

1 A I did.

2 Q The last text that she sent of any substance
3 was January 23rd, right?

4 A Well, I think the text --

5 Q Almost a week before --

6 A I think the text on the 29th that John died,
7 there is substance there.

8 Q Okay. I'm not suggesting -- I'm talking about
9 after you said, "Ummmmmm, well," on the 28th, right?

10 A Yes.

11 Q A text of substance between the two of you,
12 talking between the two you, not the "John died" text,
13 that substance ended on the 23rd, didn't it?

14 A I'd have to have the text in front of me to
15 agree with you.

16 THE COURT: I think it's right here,
17 Mr. Jackson, the exhibits right there.

18 MR. JACKSON: Thank you. May I approach?

19 THE COURT: Yes.

20 THE WITNESS: Are you directing me to the
21 23rd?

22 BY MR. JACKSON:

23 Q I am directing you to the last page. Just
24 look at everything on it and tell me if that refreshes
25 your recollection that this is the last substantive

1 text about you and Karen before your "Ummmmmm, well."

2 A Yes. It would be the 23rd at 9:40.

3 MR. JACKSON: May I?

4 THE COURT: Yes.

5 MR. JACKSON: Thank you.

6 BY MR. JACKSON:

7 Q So it was nine days of texting between the two
8 of you, correct?

9 A I believe so, yes.

10 Q And, aside from the kiss goodbye, you two
11 never had any sort of physical contact with one
12 another?

13 A Do you mean intimate when you say "physical"?

14 Q Correct. I mean, I'm not --

15 A Yes.

16 Q -- talking about shaking her hand,
17 Mr. Higgins.

18 A Well, I just -- I want to answer your question
19 truthfully.

20 Q Yes. I would like you to too.

21 You didn't have any physical intimate contact
22 with Ms. Read, correct?

23 A No, I did not.

24 Q There was no other hugs or kisses or certainly
25 no sex?

1 A No.

2 Q And, when she said, I'm glad you came over
3 tonight, in one of those texts that you just read a few
4 minutes ago, she was referring to the Patriots game
5 with John there and a big crowd there, correct?

6 A Yes.

7 Q Over the course of that week or so, Ms. Read
8 did explain her feelings about her relationship with
9 Mr. O'Keefe, correct, in text messages?

10 A During the pendency of our communication, she
11 did express, yes.

12 Q Right. And she indicated that there's a
13 difference between being married to someone and dating
14 someone, et cetera. We saw those texts. Is that
15 right?

16 A Yes.

17 Q She also indicated that in terms of the
18 situation in Aruba, she was upset by that but it's not
19 that big a deal, correct?

20 A It was clear to me she was upset.

21 Q And she said, I don't care too much about that
22 other girl, right?

23 A Well, at least that's what she said in texts,
24 yes.

25 Q Well, that's what I'm asking you. Is that

1 what she said in texts, Mr. Higgins? It's not a trick
2 question.

3 A That's what she said in texts.

4 Q Right. She said something along the lines of
5 I'm just trying to be realistic. There's cracks in the
6 relationship. It's far from perfect. Is that right?

7 A I think that's something she texted.

8 Q And you'll agree that during the course of
9 these texts, you were constantly asking for clarity and
10 explanation from her, were you not?

11 A During our communication, I did ask for
12 clarity.

13 Q Many times?

14 A Yes.

15 Q We saw it, correct?

16 A Yes.

17 Q And she pretty much wouldn't answer you,
18 correct?

19 A She was noncommittal, I would say.

20 Q Which is why you were saying in your texts,
21 why won't you answer the question? And she would parry
22 and not answer that one either, correct?

23 A Well, I didn't want to be stuck in the middle
24 of anything.

25 Q That's not my question. I'm asking you

1 whether or not she would answer your question about
2 clarity specifically in texts.

3 A She avoided questions about texts.

4 Q Right. And that was frustrating because you
5 were very interested in her romantically at that point,
6 correct?

7 A I was attracted to her. I don't now that I
8 would say very interested in her.

9 Q You texted things like why did you get my
10 number and reach out? That's a quote from the text we
11 just read, correct?

12 A I did ask that, yes.

13 Q You said, now what; is that right?

14 A Yes.

15 Q You texted, so now what, correct?

16 A Yes.

17 Q You texted, I would hang out, meaning with
18 you?

19 A Yes.

20 Q You were showing interest in her?

21 A Yes.

22 Q You were showing romantic interest in her?

23 A I wouldn't say it was romantic. I was trying
24 to vet it out.

25 Q Well, you weren't seeing if she wanted to see

1 a ballgame with you as a buddy, right?

2 A Not really, no.

3 Q No. You were showing romantic interest in
4 her, weren't you?

5 A I was trying to vet out was her interest in me
6 legitimate. It's very normal for me to have that
7 question in my mind when I didn't initiate this. She
8 did. And I think it was a fair question just to try to
9 find out.

10 Q You were showing romantic interest in
11 Karen Read, weren't you?

12 A I was interested, but I don't think I was at
13 the romantic phase.

14 Q Okay. When I say "romantic" -- well, what do
15 you mean by "romantic"? What is the romantic phase?

16 A Sending somebody flowers.

17 Q Dating?

18 A Well, there's a difference between dating and
19 hanging out. I mean --

20 Q Well --

21 A -- it's kind of hard to date somebody when you
22 have a boyfriend.

23 Q Mr. Higgins, not if both people are dating
24 other people, right? It happens all the time, doesn't
25 it?

1 A I think I asked that question, too.

2 Q Right. That's not my question. My question
3 is you seem to have a problem admitting that you had a
4 romantic interest in my client. Is there a reason for
5 that?

6 A I was attracted to her.

7 Q Right. Physically attracted?

8 A I thought she was an attractive woman.

9 Q Romantically attractive?

10 A I'm not going to go there. No. I don't agree
11 with that.

12 Q Of course you're not going to go there,
13 because that would put you in a very awkward position,
14 wouldn't it, sir?

15 MR. LALLY: Objection.

16 THE WITNESS: No, not at all.

17 THE COURT: So the objection is sustained as
18 to the form. You can ask it differently. And that
19 will be stricken.

20 MR. JACKSON: I'm sorry, Your Honor. May I?

21 THE COURT: Yes.

22 BY MR. JACKSON:

23 Q You were sexually attracted to her?

24 A I was physically attracted to her, yes.

25 Q Okay. Sexually attracted to her was my

1 question.

2 A Well, I think in the text I said, you're hot.

3 Q Okay. So my question, again, Mr. Higgins --
4 you seem to not want to answer my question. My
5 question is were you or were you not sexually attracted
6 to my client.

7 A Yes.

8 Q Okay. You were saying things like, what do
9 you want from me, and I want the real deal. Those are
10 your words, correct?

11 A Yes.

12 Q And the real deal with you would be to date
13 her, to get involved with her romantically, correct?

14 A No.

15 Q No. The real deal was what? What did you
16 mean by, I want the real deal?

17 A Like a relationship.

18 Q What kind of relationship? A buddy-buddy
19 relationship? You just want to go like --

20 A The same thing everybody wants. A real
21 relationship.

22 Q Like a romantic relationship, Mr. Higgins?

23 A It's possible.

24 Q Right. And she was answering with things like
25 -- when you said, now what, she answered, I don't know.

1 Correct?

2 A Yes, she did.

3 Q When you asked, so now what, what, she
4 answered -- I'm sorry. When you said, so now what, she
5 answered, now what, what? Correct?

6 A I don't have it in front of me. So I can't
7 agree with you. If you -- I'd like to see what you're
8 referring to.

9 Q Well, you just read it about 10 minutes ago.
10 Would you quarrel if --

11 A I know, but you're giving me portions of it.

12 Q You were given portions of it by Mr. Lally, as
13 well.

14 A Okay.

15 Q Right? Did you text something like, now what?
16 And she responded something like, now what, what?

17 A I think on one occasion she did, yes.

18 Q Okay. And you remember you just read a text
19 where she texted -- I'm sorry. You texted, what do you
20 want from me? And her responsive text was, I don't
21 know. Correct?

22 A I think that was one of the texts.

23 Q Again, with this theme of her being
24 noncommittal one way or the other; is that right?

25 A Well, I don't -- that's not how I would

1 interpret it as a theme, no.

2 Q Well, did you just say she was noncommittal?
3 That was your word, not mine.

4 A I did. But, as I told you, it's been a
5 process of trying to suss it out and see what this was
6 all about.

7 Q Right. So when you were sussing it out and
8 determining whether or not you were going to advance
9 this romantic interest, she was sort of noncommittal,
10 wasn't she?

11 A Well, not one person advances it. I think
12 that's a joint thing.

13 Q When you texted you want the real deal, she
14 responded, it doesn't exist, didn't she?

15 A She did, yes.

16 Q And she never once in any of those texts
17 expressed anger or hatred toward John O'Keefe, correct?

18 A No, not at all.

19 Q As a matter of fact, she texted more, she
20 indicated more a frustration with the immediate family,
21 the kids? She didn't want to have kids?

22 A In its totality, I would say yes.

23 Q And then on January 23rd, as you just saw, she
24 just stopped communicating with you altogether,
25 correct?

1 A Until the 29th, yes.

2 Q Do you know what the term "ghosted" means?

3 A I think I have a general idea, yes.

4 Q She sort of ghosted you, didn't she?

5 A I wouldn't agree with that.

6 Q That was frustrating to you, that she just
7 stopped communicating, wasn't it?

8 A No, not at all.

9 Q You'd been moving through this mindset of
10 exploring a romantic interest with a beautiful woman
11 who you thought was interested in you. And, just like
12 that, it was done, right?

13 A No.

14 Q So what communication did you have with her
15 after January 23rd?

16 A Well, she texted me on January 29th.

17 Q You keep saying that, but you know what I'm
18 getting to. January 29th was her informing you that a
19 tragedy had occurred. John had died, right? I'm not
20 talking about that, Mr. Higgins. So I don't want to
21 keep playing games.

22 THE COURT: That's what we talked about. No
23 more.

24 MR. JACKSON: I'm sorry, Your Honor.

25 BY MR. JACKSON:

1 Q After the 23rd or up to the 23rd, she had been
2 texting back and forth with you pretty regularly. We
3 just saw it, correct?

4 A She also sent me a text with arrows, saying
5 the phone works both ways.

6 Q And, as of the 23rd, she stopped, didn't she?

7 A The texts were sporadic over those nine days.
8 I don't know if they would have stopped or if they
9 would have kept going.

10 Q Well, they didn't keep going, did they?

11 A Well, John passed away.

12 Q They know they didn't keep going because from
13 the 23rd, on to the 24th, the 25th, the 26th, the 27th,
14 the 28th, all the way to the 29th, she never texted
15 you, right?

16 A I believe so.

17 Q She didn't respond to any of your texts,
18 correct?

19 A Well, she didn't respond to the texts on the
20 28th, Friday.

21 Q Right.

22 THE COURT: All right. Why don't we take our
23 luncheon recess, folks. What I'm going to ask the
24 jury to do is can we do a 45-minute lunch instead
25 of an hour's lunch today? And, also, and you don't

1 have to answer me now, but maybe we will go to 4:30
2 rather than 4:00 o'clock if that works for you. If
3 it doesn't work for any one of you, let the court
4 officer know. All right. Thank you.

5 (Whereupon, the jury exits the courtroom for the
6 luncheon recess at 1:00 p.m.)

7 THE COURT: So why don't I see counsel over
8 here at sidebar.

9 (Whereupon, there was a sidebar conference as
10 follows:)

11 THE COURT: Mr. Lally? Ms. McLaughlin? You
12 can bring that with you.

13 All right. So I was wondering again about the
14 proffer because if we have to do something with
15 it --

16 MR. JACKSON: We don't. That was my one
17 question and the Court was very clear, don't go
18 there with Chief Berkowitz. So I am done.

19 THE COURT: Okay.

20 MR. JACKSON: As I rack my brain, and
21 Ms. Little knows probably better than I do, I don't
22 think there is another portion where his statement
23 and the proffer is the impeachment. It's all going
24 to be the jury, which I know how to deal with. So
25 I don't think I am need to even address the

1 proffer.

2 THE COURT: Because it would be wise for him
3 to meet with his lawyer during lunch about this?

4 MR. JACKSON: Right.

5 THE COURT: I don't know how to communicate
6 that to him. If you don't have a problem with
7 Mr. Lally letting his lawyer know that this may be
8 a topic --

9 MR. JACKSON: I think that's exactly what I
10 would suggest. If Mr. Lally would be kind enough
11 to just let him know there could be an issue where
12 Mr. Jackson wants to ask about a statement in the
13 proffer, what are your thoughts about -- I don't
14 think I have to go there.

15 THE COURT: I'm at a disadvantage. I know
16 nothing about the proffer other than that there was
17 one because this witness mentioned it a few times
18 during the grand jury testimony.

19 MR. JACKSON: Right.

20 THE COURT: Are you both aware of the nature
21 of the proffer? Do you have the transcript?

22 MR. JACKSON: We do.

23 MR. YANNETTI: We have the interview. But, as
24 far as whatever the proffer was concerning or what
25 the letter was, I don't know anything about that.

1 What I do know is that in the federal system,
2 proffer means something entirely different.

3 THE COURT: Well, the point is you have to be
4 able to link it to his testimony here.

5 MR. JACKSON: Right.

6 THE COURT: And, for that, I would need to
7 have a hearing. There are all sorts of problems of
8 having a hearing like that in open court. So I
9 just need to know that if you're saying --

10 MS. LITTLE: Can I just --

11 THE COURT: Sure. Talk quietly.

12 (Whereupon, there was a discussion off the record.)

13 MR. JACKSON: Ms. Little was reminding me
14 there is an issue that I will bring up that was
15 brought up in the proffer, but it was also brought
16 up in the context of the grand jury, which that's
17 all I'll use. I don't need to relate it back.

18 THE COURT: Right. So is it in the context of
19 an impeachment, a prior inconsistent statement or
20 -- I need to know if it has to deal with the
21 proffer.

22 MR. JACKSON: It does not have to deal with
23 the proffer, no.

24 THE COURT: Okay.

25 MR. JACKSON: It's just an inconsistent

1 statement about what happened inside 34 Fairview,
2 his observations.

3 THE COURT: Okay.

4 MR. JACKSON: That's all it is.

5 MR. LALLY: Your Honor, just to be clear, for
6 the record, my concern as it pertains to the
7 proffers is because I believe there is uniqueness
8 as to how a proffer works in the federal system.
9 There is no way for the witness to explain what a
10 proffer is without making reference to the U.S.
11 Attorney's Office and all of that.

12 THE COURT: Which is why I interjected when
13 you asked a question about his assignment, whether
14 he could answer that because, again, I have no idea
15 about the proffer and I don't know if that was
16 related. But it sounds like the defendant does not
17 intend to get into that, correct, Mr. Jackson?

18 MR. JACKSON: I do not, no.

19 THE COURT: Okay.

20 MR. JACKSON: I've gone as far as I'm going to
21 go on any of that.

22 THE COURT: So Ms. McLaughlin grabbed an
23 exhibit. Is there something you were saying about
24 it?

25 MR. LALLY: Your Honor, there is within the

1 text, I think on this page and maybe one other
2 page --

3 THE COURT: Yes. There are two pages.

4 MR. LALLY: -- where the defendant is in a
5 photograph of the children.

6 THE COURT: The children.

7 MR. LALLY: I'd like to redact that.

8 MR. JACKSON: No objection.

9 THE COURT: I saw that, as well. Is there an
10 agreement that those two pages can be removed from
11 Exhibit 104A and replaced or how do you want to do
12 it?

13 MS. MC LAUGHLIN: My biggest concern is just
14 if -- I think I could, you know, cover that and
15 take a picture and put it back and just kind of put
16 the page back in but redact the picture.

17 THE COURT: I am fine with that. What we will
18 need to do is take the two pages out, mark them for
19 identification.

20 MR. LALLY: Mark them.

21 THE COURT: So this copy has a page number on
22 it. I didn't have that. Wait. I need to -- okay.

23 For identification together, please, Madam
24 Court Reporter.

25 THE COURT REPORTER: That will be "PP" for

1 Identification.

2 Whereupon, two pages from Exhibit No. 104A were
3 entered and marked Exhibit "PP" for
4 Identification.)

5 THE COURT: Thank you.

6 MR. LALLY: And my apologies. I asked
7 Ms. Gilman to put the numbers on there, just to
8 make it --

9 THE COURT: No. That's great. I thought the
10 witness had what I had. Plus you all have color
11 photos and I don't. So it is 47 and 48 of Exhibit
12 104A. The Commonwealth has permission to redact
13 the photograph on the bottom that shows two small
14 sleeping children. Counsel agree. You don't need
15 this because you have it separately, right?

16 MR. LALLY: We can get it.

17 MS. MC LAUGHLIN: We can.

18 MR. LALLY: That's correct, yes.

19 THE COURT: I just don't like exhibits leaving
20 the room if we can help it.

21 MR. LALLY: Yes.

22 THE COURT: All right. So we'll start back up
23 at quarter of two. Even if you finish today, it's
24 been that there has been redirect. What is your
25 position on that? Will you be coming back for that

1 even if you finish or will one of your colleagues
2 take over that?

3 MR. JACKSON: My suggestion would be if we can
4 take him out of order and order him back for the
5 following Monday. I have to be here for that if
6 that happens.

7 THE COURT: I don't want to do that on a
8 redirect or recross. But let's see how far we go.
9 That's why I asked the jury if they would stay an
10 extra half hour.

11 MR. JACKSON: That was very kind. I think I
12 can get done. I do.

13 THE COURT: Okay.

14 MR. JACKSON: And I think I can leave
15 Mr. Lally enough room to get done as well.

16 MR. LALLY: I don't foresee being terribly
17 long.

18 THE COURT: Speed it up. All right. Thank
19 you. I'll see you at quarter of two.

20 MR. JACKSON: Thank you.

21 (Whereupon, the luncheon recess was taken.)
22
23
24
25

A F T E R N O O N S E S S I O N

(Court resumes.)

(Defendant present. Jury present.)

THE COURT: All right, Mr. Jackson. Whenever you're ready.

MR. JACKSON: Thank you, Your Honor.

BY MR. JACKSON:

Q Mr. Higgins, before we broke for lunch, we were talking about the text exchanges and the communication that you were having with Ms. Read in the days leading up to January 23rd. Do you recall that?

A Yes.

Q It's fair to say that her text communications with you started to dwindle off in the days before the 23rd, correct?

A They lagged.

Q As a matter of fact, you reached out to her in an effort to try to prompt the conversation to continue, did you not?

A I reached out to her, but I wouldn't say that's what it was about.

Q Well, you texted her, stranger, stranger, didn't you, not once but twice?

A I believe so.

Q Take a look, if you don't mind, at -- this is

1 a page from what you've just seen --

2 THE COURT: All right. So he needs the
3 exhibit.

4 MR. JACKSON: I'm sorry. I was thinking that
5 was right in front of you. May I approach?

6 THE COURT: Please.

7 MR. JACKSON: Thank you. It was easy to find.
8 It's literally the last page. With the Court's
9 permission, may I publish?

10 THE COURT: Yes.

11 BY MR. JACKSON:

12 Q Does that look like a fair representation of
13 what you're looking at, the last page of that series of
14 texts?

15 A Yes.

16 Q At the very top, can you read what you write
17 in the blue bubbles, starting at the top?

18 A (As read), "Haha. Stranger stranger."

19 Q And then what was the response from Ms. Read?

20 A (As read), "Hey. I was at the Hilly all
21 weekend."

22 Q And what did you respond at that point?

23 A (As read), "I have not heard from you."

24 Q And, by the way, if you look at the next date
25 down, what is the date underneath "I have not heard

1 from you"?

2 A The 23rd.

3 Q So this would have preceded the 23rd, correct?

4 A Yes.

5 Q Okay. Then on the 23rd -- and, by the way,
6 after you texted, I have not heard from you, she did
7 not respond, correct?

8 A She did not respond.

9 Q Then on the 23rd, she did respond with (as
10 read), "Phone works," correct?

11 A And the arrows like both ways. Yes.

12 Q Right. And then what did you text after that?

13 A I just said (as read), "I thought you were all
14 set."

15 Q And how did she respond?

16 A She said (as read), "With talking? No."

17 MR. JACKSON: Your Honor, that's all I have
18 for that.

19 THE COURT: Okay.

20 MR. JACKSON: We can bring the lights back up.

21 BY MR. JACKSON:

22 Q So clearly with that last text, her response
23 was, in response to you saying, thought we were all
24 set, she said, with talking, no, correct?

25 A Yes.

1 Q Did that indicate to you that with flirting,
2 yes, we're all done?

3 A No. I didn't read anything into it.

4 Q Okay. But you did read where she said, with
5 talking, no. Correct?

6 A Yes.

7 Q And then you responded (as read), "How?"

8 A I said (as read), "Hmmm. Are you sure."

9 Q And did she respond?

10 A No.

11 Q As a matter of fact, the next time you saw or
12 communicated with her, she was walking into the
13 Waterfall bar on the 29th, early morning hours of the
14 -- late night hours of the 28th, going into the early
15 morning of the 29th with her boyfriend, John O'Keefe,
16 correct?

17 A Yes.

18 Q Now, you had discussed your flirtations, if I
19 can use that word, that you had with Ms. Read with your
20 friends, at least some of them, correct?

21 A I don't recall that, no.

22 Q Do you recall that you openly shared the
23 details of your interest in Ms. Read with your work
24 supervisor at the DOJ?

25 A Well, that was after -- I shared what

1 happened, that she kissed me. Yes. I did share that
2 with her.

3 Q And that was with --

4 A That was the first time.

5 Q And that was with a person by the name Kate
6 Dowd; is that right?

7 A That's correct.

8 Q And that was before January 29th?

9 A Yes.

10 Q And that's because your interest in Karen
11 Read, whether you call it romantic or sexual or
12 whatever, your interest was something that was at least
13 occupying your mind at that point, correct?

14 A No.

15 Q It was occupying your mind enough to share it
16 with your boss?

17 A No. What I shared with my boss was the fact
18 that she kissed me. That was it.

19 Q Did you discuss your flirtatious relationship
20 with Karen Rad with Brian Albert at any point?

21 A No.

22 Q Never?

23 A No.

24 Q So you were on a four-hour drive in a
25 snowstorm back from New York with Mr. Read -- I'm

1 sorry, with Mr. Read -- with Mr. Albert and your
2 interest in Karen Read never came up?

3 A No.

4 Q Even though he's a good friend?

5 A Yes. It's just something I wouldn't talk
6 about.

7 Q You'd been drinking since about what time?
8 That's a bad way to ask it. What time did you start
9 drinking?

10 THE COURT: When? When are we at,
11 Mr. Jackson?

12 MR. JACKSON: I'm sorry.

13 BY MR. JACKSON:

14 Q On the 28th when you got back from New York.
15 When did you start drinking?

16 A Well, it wasn't until I swapped out vehicles
17 and I went up to the hillside.

18 Q Okay. Give me a time frame. Nineish?
19 Eightish?

20 A It was dark. It was maybe in the area of 8:00
21 o'clock.

22 Q And what time do you think you got to
23 Waterfall?

24 A I couldn't say. It was after the Hillside.

25 Q Before Brian Albert left Hillside, did he tell

1 you that John O'Keefe had been invited over to meet
2 them at the Waterfall?

3 A No.

4 Q Was there any particular reason why you
5 changed your mind and left the Hillside to go to the
6 Waterfall?

7 A Well, I think, as I previously testified, that
8 it was because I didn't always take them up on their
9 offer, and I usually do the Irish exit. And I decided,
10 because of the weather and everything else, and it had
11 been a long day, that I would go down there and join
12 them.

13 Q It didn't have anything to do with you known
14 that Karen Read might be at the Waterfall?

15 A It couldn't have, because I didn't know she or
16 John O'Keefe would even be there. I didn't know who
17 was going to be there other than Brian's wife.

18 Q Did you have any text messages with Brian
19 about going to the Waterfall?

20 A I don't recall. He told me about it at the
21 Hillside.

22 Q And, once he got to the Waterfall, he got the
23 Waterfall, obviously, before you did?

24 A He did. I think shortly before. Yes.

25 Q Any text communications between you and

1 Brian Albert about who was at the Waterfall and who was
2 expected to come to the Waterfall?

3 A No, not that I recall.

4 Q Now, you've already indicated, and I don't
5 think we need to go into a lot of detail about this,
6 but I want to ask you just in general, the mood at the
7 Waterfall was good spirits, correct?

8 A It was great. A band was playing.

9 Q You did not see any sort of tension between
10 John and Karen?

11 A I did not.

12 Q Nobody seemed overly intoxicated?

13 A No.

14 Q You had had several drinks before you even got
15 to the Waterfall, right?

16 A I think it was three to four.

17 Q Did you drink additionally at the Waterfall?

18 A I did, yes.

19 Q Did you drink whiskey or beer or what?

20 A Whiskey.

21 Q Okay. How many do you think you had?

22 A I couldn't put a number on it. At least a
23 couple.

24 Q And, ultimately, you left from there in your
25 personal vehicle and drove over to the -- that's the

1 Jeep --

2 A The Jeep, yes.

3 Q -- drove over to the Waterfall, correct?

4 A I drove over to the Waterfall? I was at the
5 Waterfall.

6 Q I'm sorry. You left the Waterfall and drove
7 over to 34 Fairview?

8 A I did, yes.

9 Q When John walked into the Waterfall, were you
10 already there?

11 A Yes.

12 Q He greeted you, you indicated, correct?

13 A Yes. I believe so.

14 Q Karen walked in with him?

15 A Yes.

16 Q But she did not greet you, did she?

17 A I think they kind of went like that, in
18 different directions.

19 Q Right.

20 A Yes.

21 Q Did she greet you?

22 A No.

23 Q Right. So she walked over toward the corner
24 of the bar and John came over and greeted you and then
25 walked over and joined her, correct?

1 A Yes.

2 Q Karen didn't stop what she was doing once she
3 was over in the corner of the bar and come over and say
4 "hi" to you?

5 A I didn't have any interaction with her that
6 night. No.

7 Q So it's safe to say that throughout that
8 evening, once she was sidled up next to John O'Keefe or
9 the friends that she was with, she never turned back
10 around and came over and even acknowledged you,
11 correct?

12 A That's correct.

13 Q So she basically ignored you the entire
14 evening?

15 A That's not how I interpret it.

16 Q I didn't ask you how you interpreted it. I
17 asked you what she did. Did she ignore you or did she
18 pay attention to you?

19 MR. LALLY: Objection, Your Honor.

20 THE COURT: You can go ahead and answer that.

21 Did she ignore you?

22 THE WITNESS: No.

23 BY MR. JACKSON:

24 Q So she paid attention to you? Came over and
25 said "hello," shook your hand, gave you a hug?

1 A Well, just because somebody didn't come over
2 doesn't mean they ignored you.

3 Q Did she do those three things?

4 A Hug? What was the other --

5 Q Did she say "hello"? Did she shake your hand,
6 give you a hug?

7 A No, she did not.

8 Q No. She didn't do any of those things, did
9 she?

10 A No.

11 Q It was like you didn't even exist?

12 A I think that's dramatic. No. I don't look at
13 it that way.

14 Q Did she ignore you or not?

15 A No. She did not ignore me.

16 Q So what did she do to not ignore you?

17 A She was --

18 Q What was her interaction with you?

19 A Can I answer now?

20 Q Sure.

21 A In my opinion, she was working the room,
22 talking to people, saying "hello," catching up.

23 Q Right. The one person she didn't come over to
24 talk to and say "hello" to and catch up with is you,
25 correct?

1 A I don't know that I was the only person, but I
2 was one of the people that she didn't say hello to,
3 yes.

4 Q She treated you sort of like a stranger?

5 A I don't feel that way. No.

6 Q She actually positioned herself away from you
7 at the other end of the table on the opposite side in
8 the corner; isn't that right?

9 A I don't know where she was all night. No. I
10 don't know.

11 Q Did that upset you that she ignored you or
12 didn't pay attention to you?

13 A I did not feel ignored and it didn't upset me
14 at all.

15 Q But it bothered you enough to send her a text,
16 didn't it?

17 A No. It was a flirtatious text. That was it.

18 Q It bothered you enough to send her a text that
19 said, "Ummmmmm," with six M's behind it.

20 A Okay.

21 Q And, well, correct?

22 A Well, it wasn't like that. It was, "Ummmmmm,
23 well." That's it.

24 Q Just, "Ummmmmm, well," like a well in the
25 ground?

1 A I think you know what I mean.

2 Q Yeah. I think you do too, sir. You meant,
3 ummmmmm, well, when are you going to pay attention to
4 me?

5 A No. That's not correct.

6 Q Ummmmmm, well, why are you ignoring me?

7 A That's not correct.

8 Q Ummmmmm, well, am I chopped liver?

9 MR. LALLY: Objection.

10 THE COURT: All right. That's sustained.

11 Mr. Jackson, let's move along.

12 BY MR. JACKSON:

13 Q At the end of the night, the group basically
14 discussed going back to Brian Albert's house; is that
15 right?

16 A There was discussion at the table of like were
17 we going to go to the pizza shop or were we going to go
18 somewhere else. And, ultimately, it was 34 Fairview.

19 Q Before you left, just so we are clear, when
20 you texted, "Ummmmmm, well," she ignored that text from
21 you, didn't she?

22 A Can you say that again?

23 Q When you texted her, "Ummmmmm, well," at
24 Waterfall, she ignored that text too, correct?

25 A Well, that was the only text I sent that night

1 to her. Yes. She didn't respond.

2 Q That wasn't my question. My question is she
3 ignored the text, correct?

4 A I don't know if she -- I don't know what her
5 mindset was. If she purposely ignored the text or she
6 didn't see it, I don't know. I didn't read into it.

7 Q Did she ignore the text, Mr. Higgins?

8 A I don't know.

9 Q Did she respond to the text?

10 A She did not respond.

11 Q Got it. So when everybody was leaving, did
12 you leave before they did, John and Karen, or did they
13 leave before you did?

14 A I don't know.

15 Q You said you were the first one back to Brian
16 Albert's house, correct?

17 A Yes.

18 Q Safe to say you were one of the first ones to
19 leave?

20 A I was the first one to leave --

21 Q Waterfall

22 A -- the Waterfall? Probably.

23 Q I mean, if everybody is herding out and you're
24 the first one to get there, you were probably among the
25 first to leave, correct?

1 A Most likely.

2 Q Okay. You never personally discussed going to
3 34 Fairview with -- certainly not with Karen Read, did
4 you?

5 A No.

6 Q And you never discussed it with John O'Keefe,
7 either, did you?

8 A No.

9 Q You didn't say "goodbye" or walk over and give
10 John a big hug or anything like that, an
11 acknowledgment, did you?

12 A No.

13 Q You just left?

14 A That's what everybody was doing, just leaving.

15 Q Okay. You too, correct?

16 A I did leave, yes.

17 Q And all you knew that -- at that point, all
18 you knew was that you were going over to 34 Fairview.
19 You didn't know who else was invited over to 34
20 Fairview, did you?

21 A My impression was that it was an open
22 invitation and I planned on heading over there.

23 Q But you did not know who else was coming?

24 A I had no idea who was coming.

25 Q And you didn't say "goodbye" to John, correct?

1 A I don't think I said "goodbye" to anybody.

2 Q And you didn't talk to him about coming over
3 to 34 Fairview?

4 A No.

5 Q Yet at 2:20 in the morning, you texted John
6 O'Keefe, you coming here, correct?

7 A At 2:20?

8 Q Sorry. 12:20.

9 A I did.

10 Q And that had three question marks behind it,
11 correct?

12 A Yes.

13 Q Did you text Karen about coming over to 34
14 Fairview?

15 A No.

16 Q So at 12:20 a.m., after you left the Waterfall
17 and made your way over to 34 Fairview, you were more
18 interested in getting John to come to 34 Fairview than
19 you were in getting Karen to come to 34 Fairview?

20 A No. That's not how I would describe that.

21 Q But you didn't text Karen, correct?

22 A No, I didn't.

23 Q But you did text John?

24 A Yes.

25 Q You've indicated that you took your Jeep, your

1 personal vehicle with the plow on it, over to 34
2 Fairview, correct?

3 A Yes.

4 Q And you were among the first to arrive because
5 you were doing that thing with the -- sort of playing
6 around by plowing his driveway?

7 A It was a sweep of the driveway. Yes.

8 Q And then you indicated that you parked in
9 front of the house, correct?

10 A I did.

11 Q I know you've been over this before, but I'm
12 going to ask you sort of one final time so it's
13 completely clear.

14 Exactly where was your Jeep in front of that
15 house?

16 A By the mailbox.

17 MR. JACKSON: Can we have, with the Court's
18 permission, Exhibit 66?

19 THE COURT: All right.

20 BY MR. JACKSON:

21 Q This is a graphic representation of 34
22 Fairview. It's not a photograph.

23 Just to orient you, do you see what's depicted
24 in Exhibit 66?

25 A Yes.

1 Q Do you recognize it?

2 A I do.

3 Q Do you see the mailbox which is about right
4 there?

5 A Yes.

6 Q Okay. Where was your Jeep in relation to that
7 mailbox?

8 A So the back end of the Jeep, the rear, would
9 have been around equal with the mailbox. And I was not
10 blocking the driveway.

11 Q Okay. So you were about there, correct? If
12 the right edge of that highlight is the mailbox, and
13 the mailbox being right there, it would have been about
14 right there on the street, correct?

15 A Well, that would have been the front of the
16 Jeep where your laser pointer is. It would be the
17 front.

18 Q Okay. So the front of the Jeep was facing the
19 flagpole?

20 A Towards Chapman Street, correct.

21 Q And the rear of the Jeep was basically even
22 with the mailbox strut or stanchion?

23 A It was definitely past the driveway, yes.

24 Q You indicated the plow was a six-foot-what
25 inch plow?

1 A I think it was a six-eight.

2 Q Six-eight meaning the width?

3 A Meaning the width, yes.

4 Q How deep is that plow?

5 A How deep?

6 Q Two feet? Three feet? Six inches?

7 A I mean, it's probably a few inches. It's
8 light duty. It's on a Jeep.

9 Q Okay. And it's obviously curved and canted to
10 the right?

11 A No. It wasn't canted at all. It was straight
12 down.

13 Q Okay. So it's not like -- I guess I'm
14 picturing in my mind -- I don't know that I've ever
15 seen one -- that the front of the Jeep is not parallel
16 to the plow? In other words, it would plow stuff off
17 to the right. Is that not right?

18 A I'm not understanding what you're trying to
19 communicate to me.

20 Q How is the plow positioned as it relates to
21 the front end of the Jeep? Is it perfectly parallel to
22 the front end or is it canted one way or another?

23 A So when you're driving, you're driving
24 straight, locally, where you're not going to have to
25 worry about overheating the Jeep, I would just have the

1 Jeep and the plow straight. If I was on the highway
2 for a long distance, I would be worried about
3 overheating. So I would canter the plow tilted up so
4 that air could get through the front grill.

5 Q So, in other words, you can control it?

6 A I can, yes.

7 Q How was it that night? How was it canted that
8 night? Was it straight or canted?

9 A It was straight, straight on.

10 Q All right. When you walked into 34 Fairview,
11 you indicated that there were people congregated
12 basically in the kitchen area, correct?

13 A There were some people in the kitchen area,
14 yes.

15 Q How many people were at the high top table
16 that you described?

17 A Initially when I walked in, I believe there
18 was Brian, Jr., and he was flanked by one, possibly two
19 females.

20 Q And you indicated that basically you were
21 positioned in that area with your back to the door for
22 most of the evening, correct?

23 A I was like kind of -- I would describe it as
24 diagonally across from him and had my back to the door
25 that I had come in, which would be the breezeway door.

1 Q But, at some point, you had moved out of that
2 kitchen area with Brian Albert, correct?

3 A Well, I briefly went and looked at some
4 photos.

5 Q Right. So you moved out of that area with
6 Brian Albert alone to go to a different room?

7 A Yes. And I think his wife, Nicole, might have
8 popped in the room for a second. But it was brief.

9 Q Did you have anything to drink while you were
10 at 34 Fairview?

11 A Well, when I got there, they didn't have any
12 whiskey. I believe they might have put a beer or
13 something else in front of me. You know, I knew it was
14 going to be a short night there because I just wasn't
15 going to -- I'm not a beer drinker.

16 Q You've indicated in prior testimony that
17 you've never been upstairs in Brian's house, correct?

18 A When you say "upstairs," like are you talking
19 about the second floor?

20 Q Correct.

21 A Yes. No.

22 Q Okay. You testified to that in a prior
23 hearing; is that right?

24 A Yes.

25 Q In May of 2023?

1 A Yes.

2 Q And you said specifically (as read), "I have
3 never been upstairs"; is that right?

4 A Yes.

5 Q You understood when you gave that statement
6 that you were under oath?

7 A Yes.

8 Q You were telling the truth?

9 A Yes.

10 Q The same oath that you took here today,
11 correct?

12 A Yes.

13 Q You indicated that the photos that you saw
14 were on the first floor living room area; is that
15 right?

16 A I believe that's where they were, yes.

17 Q So the only floor downstairs from the first
18 floor would be what?

19 A The basement.

20 Q And the only floor upstairs from the basement
21 would be what?

22 A The first floor.

23 Q So if someone were to describe going upstairs
24 to look at the photos that you've described on the
25 first floor, where would they have to be to go upstairs

1 to look at those photos?

2 A Are you saying on the first floor?

3 Q Correct. If the photos are on the first
4 floor --

5 A Yeah.

6 Q -- and someone said, we went upstairs to look
7 at those photos, where would they have to be?

8 A I guess upstairs.

9 Q The people would have to be upstairs?

10 A Well, the photos would be upstairs. Is that
11 what you're saying?

12 Q Where are the people? Where do the people
13 have to be to go upstairs into the living room to look
14 at the photos?

15 A I'm not understanding the question.

16 Q If the photos were on the first floor,
17 Mr. Higgins --

18 A Yes.

19 Q -- the only floor beneath it is the basement.

20 A Okay.

21 Q And if someone says, we went upstairs to look
22 at the photos, where would they have to be?

23 A Well, who said they went upstairs?

24 THE COURT: Mr. Jackson, you can save this for
25 argument. Next question, please.

1 BY MR. JACKSON:

2 Q If Brian Albert said you went upstairs to look
3 at the photos, where would you have to be?

4 MR. LALLY: Objection.

5 THE COURT: Sustained.

6 BY MR. JACKSON:

7 Q Now, Brian Albert had a weight room someplace
8 in the house, right?

9 A Yes.

10 Q And a gym?

11 A I guess he called it a home gym.

12 Q Where was that?

13 A In the basement.

14 Q Had you ever been down to that basement
15 before?

16 A Yes, one time.

17 Q When was that?

18 A That was during the twins' graduation party.
19 Summertime.

20 Q Summertime before --

21 A Summertime before, yes.

22 Q Summer of 2021?

23 A Maybe.

24 Q So if Brian Albert testified that you had
25 never been in the basement, that would not be accurate?

1 MR. LALLY: Objection.

2 THE COURT: Sustained.

3 BY MR. JACKSON:

4 Q Now, you do recall giving testimony at another
5 proceeding on June 1st, 2023, correct?

6 A Yes.

7 Q And, of course, the same thing applied? You
8 were under oath, is that right?

9 A Yes.

10 Q You knew that it was a crime to lie under oath

11 --

12 A Yes.

13 Q -- in that proceeding. During the course of
14 that proceeding, you were asked who was in the house
15 and who you saw come into the house, correct?

16 A Yes.

17 Q And, during the course of that testimony, you
18 admitted that you observed a tall, dark-haired male
19 enter the Albert house that night, correct?

20 A I believe that was in reference to somebody's
21 brother in a pickup. I don't know if that was during

22 --

23 Q All I'm asking you, Mr. Higgins, is did you
24 say that? Did you say a tall, dark-haired male entered
25 the house while you were there?

1 A I said they might have.

2 Q Did you say they might have?

3 A Yes. And that was in reference to --

4 MR. JACKSON: If I may have just a moment,
5 Your Honor?

6 THE COURT: Yes.

7 BY MR. JACKSON:

8 Q Isn't it true that you indicated that a male
9 showed up who may have been Julie Nagel's brother,
10 correct?

11 A I said might, yes.

12 Q Right. But there was no question in your mind
13 that a male did, in fact, show up. And you described
14 him as tall and dark hair, right?

15 A Yes.

16 Q You were asked, a male showed up where? And
17 you answered, quote, "Showed up at the house that I
18 didn't know. I think he was there very briefly. I
19 just -- I was paying -- I was half paying attention to
20 it.

21 "Question: Did that male come inside the
22 house?

23 "Answer: I believe he did."

24 Do you remember that?

25 A Yes.

1 Q So a male did come in the house that night,
2 correct?

3 A No. I said I believe he did. I wasn't sure.

4 Q Well, when you testified at the prior hearing,
5 you were asked, "So you saw someone else come?

6 "Answer: Somebody else, yes," end quote.

7 That's what you testified to under oath,
8 wasn't it?

9 A Is that in reference to that?

10 THE COURT: What page are you on, Mr. Jackson?

11 MR. JACKSON: It's page 485-486, I believe.

12 Yes. If I may, may I approach?

13 THE COURT: Yes.

14 BY MR. JACKSON:

15 Q Take a look at the top part that I've
16 highlighted.

17 A Thank you.

18 Q Mr. Higgins, do you have that in mind?

19 A I do.

20 MR. JACKSON: May I approach?

21 THE COURT: Yes.

22 BY MR. JACKSON:

23 Q You were asked the question, quote, "Did that
24 male come inside the house?"

25 You answered, "I believe he did.

1 "Question: So you saw someone else come?

2 "Answer: Somebody else, yes."

3 Correct?

4 A Yes, but I also said that I wasn't paying
5 attention.

6 Q Mr. Higgins, I realize that you want to
7 explain your answer. I've asked you a very simple
8 question. Was that your testimony in front of another
9 proceeding --

10 A Yes, it was.

11 Q -- at another proceeding at which you were
12 under oath?

13 A Yes, it was.

14 Q You also said that you only remember seeing
15 that person come in briefly, and it looked like he was
16 having a conversation with the two girls briefly,
17 correct?

18 A Yes.

19 Q You were asked how long was the person in
20 there roughly. And you said, it was quick. I don't --
21 less than a couple of minutes. I mean, it was quick.

22 Correct?

23 A Yes.

24 Q And then you were asked what he looked like.
25 And you said, I feel like they were a little bit

1 taller, maybe had dark hair. Correct?

2 A Yes.

3 Q So you testified that a tall, dark-haired male
4 came into the house at least briefly in your testimony,
5 correct?

6 A Yes.

7 Q Approximately when in the timeline of events
8 did that unidentified male enter the residence?

9 A I don't know the time frame. It would have
10 been while I was there.

11 Q When you gave your statement to the
12 Massachusetts State Police, you didn't tell them about
13 a tall, dark-haired male coming into the residence at
14 34 Fairview, did you, on February 3rd?

15 A I don't recall.

16 Q You were specifically asked by A.D.A. Lally
17 when you testified before the state court grand jury on
18 April 28th, 2022, who else was present, correct?

19 A Yes.

20 Q And you never mentioned a tall, dark-haired
21 male coming into the house, did you?

22 A No.

23 Q However, on June 1st, 2023 at this other
24 proceeding, you were specifically instructed at the
25 start of your testimony that it was a crime to give

1 materially false statements in that proceeding,
2 correct?

3 A Yes.

4 Q And that's the proceeding in which you
5 admitted that there was a tall, dark-haired male who
6 came in the house? Yes or no. Yes or no. It's that
7 proceeding --

8 THE COURT: Can you answer that yes or no?

9 THE WITNESS: No, I can't, Your Honor.

10 THE COURT: Next question, Mr. Jackson.

11 BY MR. JACKSON:

12 Q The quotes that I just read you and that you
13 just looked at --

14 A Yes.

15 Q -- that was from the June 1, 2023 hearing,
16 wasn't it?

17 A I don't know.

18 MR. JACKSON: May I approach, Your Honor?

19 THE COURT: Yes.

20 BY MR. JACKSON:

21 Q That's what was just read, and that's another
22 page. Just take a look at that page and see if you see
23 a date on the first page.

24 A I see it. Yes.

25 MR. JACKSON: May I approach?

1 THE COURT: Yes.

2 BY MR. JACKSON:

3 Q What is the date, sir?

4 A June 1st.

5 Q 2023?

6 A Yes.

7 Q How long did you stay at the Albert residence
8 in total from the time you got there to the time you
9 left?

10 A Maybe like a half hour. Less than an hour.

11 Q And what time did you leave? Say 12:30, you
12 said?

13 A I think I said between 12:30 and 1:00 a.m.

14 Q Okay. And you indicated that you pretty much
15 didn't say "goodbye" to anybody, right?

16 A At the house?

17 Q Correct.

18 A I just kind of left. I said "see you later,"
19 and turned around and left.

20 Q As a matter of fact, at that same hearing that
21 we just looked at, your statement was, I made a beeline
22 out of there, correct?

23 A I don't know if that's the verbiage I used,
24 but I left.

25 Q Why the rush? Why did you leave so quick?

1 A Because it was a long day and I just wanted to
2 go home.

3 Q Except you didn't go home, did you?

4 A No. I went back to Canton P.D.

5 Q Right. So it wasn't such a long day that you
6 actually drove home. You went back to the Canton
7 Police Department at 1:00 or 1:30 in the morning,
8 correct?

9 A To move vehicles, correct.

10 Q Well, let's talk about you leaving. You
11 walked out the side breezeway door, correct?

12 A Yes.

13 Q You walked down the driveway?

14 A Yes.

15 Q There is nothing obstructing your view at that
16 point of the lawn to your right, correct?

17 A I didn't look over there but I would not think
18 so.

19 Q Between you and the flagpole, in other words,
20 there wasn't some mound of dirt, something obstructing
21 your view? You could see straight across if you wanted
22 to, correct?

23 A If I wanted to, yes.

24 Q It's just basically a flat, grassy lawn with a
25 light dusting of white powder snow on it, right?

1 A I don't know how much snow, but there was snow
2 there.

3 Q Yes. You indicated that there wasn't even
4 enough to stick to the pavement at that point?

5 A Well, that's when I got there. Yes.

6 Q Well, you only stayed less than an hour,
7 right?

8 A That's correct.

9 Q So I'm assuming it didn't dump three feet in
10 an hour, correct?

11 A I think we both can agree that it wouldn't
12 have been three feet. No.

13 Q So it would have been a light dusting of snow?

14 A More snow than there was there.

15 Q How far would you say it was from the edge of
16 the driveway over to your Jeep?

17 A From where the back of my Jeep was parked?

18 Q Correct.

19 A Maybe a foot or two, or it could have been
20 even with the edge of the driveway.

21 Q Oh, no, no. I'm sorry. It's probably a bad
22 question on my part.

23 When you left the house, as you started to
24 walk down the driveway toward your Jeep, how long of a
25 walk is that, across the yard, you know, down the

1 driveway to get to your Jeep?

2 A Short.

3 Q Thirty feet?

4 A Maybe.

5 Q Okay. During the course of you walking out
6 the door, heading to your Jeep, you didn't see anything
7 out of the ordinary in the yard, correct?

8 A No.

9 Q You certainly didn't see a body in the yard?

10 A Of course not.

11 Q Now, you get in your car, and it's facing
12 directly toward the flagpole, correct?

13 A It's facing directly up the street. The
14 flagpole would be off to the 1:00 o'clock.

15 Q Right. So just a few degrees off to the right
16 the flagpole is, correct?

17 A It's off to the right.

18 Q Just a few degrees?

19 A I don't know how many degrees, but it's off to
20 the right.

21 Q Well, you just said 1:00 o'clock.

22 A Yes.

23 Q You're a former military guy, right?

24 A I am.

25 Q Okay. 1:00 o'clock means 1:00 o'clock on a

1 watch. 12:00 o'clock is due north or right in front of
2 you. 1:00 o'clock is just a few degrees to the right,
3 correct? That's what you meant?

4 A At the 1:00 o'clock. Yes.

5 Q Okay. So you didn't see a body when you got
6 in your Jeep?

7 A No, I did not.

8 Q Then you turned the engine on, correct?

9 A And the wipers, yes.

10 Q And the lights?

11 A Yes.

12 Q And the lights lit up everything in front of
13 you, correct?

14 A Yes.

15 Q You still didn't see a body, did you?

16 A No, I did not.

17 Q Sitting in the driver's seat, you put the car
18 in gear and you begin to roll forward, right?

19 A Yes.

20 Q But there was a plow on the ground and it
21 scraped for a foot, right?

22 A Yes.

23 Q So you picked it back up?

24 A Yes.

25 Q Looked out the windshield to make sure the

1 plow was situated and continued to roll forward,
2 correct?

3 A I knew it was up when I continued to drive.

4 Q And, as you continued to drive, you're looking
5 ahead of you and probably to your left to make sure
6 that there's no oncoming cars, right?

7 A Well, I knew there was no oncoming cars. I
8 was just driving forward.

9 Q Right. So your focus is directly in front of
10 you?

11 A On the road, yes.

12 Q And everything in your peripheral vision was
13 right in front of you, as well, correct?

14 A Yes.

15 Q Nothing obstructing your view?

16 A I mean, other than snow on the car.

17 Q Nothing obstructing your view outside toward
18 the lawn? There wasn't another car parked there?

19 A No, no. There were no vehicles in front of
20 me. No.

21 Q The roadway was relatively empty?

22 A There was no cars.

23 Q And you didn't see a body then, either, did
24 you?

25 A I did not.

1 Q And, as you drive past that flagpole with
2 everything lit up and everything in your peripheral
3 vision, you still didn't see a body on that lawn, did
4 you?

5 A I did not.

6 Q You're a former firefighter; is that right?

7 A Yes.

8 Q And that puts you in a position of being a
9 first responder?

10 A Yes.

11 Q And you're currently a law enforcement
12 officer?

13 A Yes.

14 Q That puts you in the position of being a first
15 responder, correct?

16 A I'm also a tactical medic. Yes.

17 Q Which means that you have training to be an
18 observer. You're a trained observer, more than the
19 average person, correct?

20 A Yes.

21 Q You look for things out of the ordinary. You
22 look for things that don't belong as an investigator
23 and former firefighter, a first responder, correct?

24 A Yes.

25 Q And you did not see a 217-pound man bleeding

1 out on the side of the road in the lawn or in the yard
2 just to your right by that flagpole, correct?

3 A If I did, I would have --

4 Q I didn't ask you if you did.

5 A -- done something to help him.

6 Q I asked you if you saw one.

7 A No, I did not.

8 Q And that's because there was no body there,
9 correct?

10 A I didn't see anything.

11 Q Because if there was a body there, you
12 certainly would have seen that?

13 MR. LALLY: Objection.

14 THE COURT: Sustained.

15 BY MR. JACKSON:

16 Q Where exactly did you go when you left 34
17 Fairview?

18 A I went back to the Canton Police Station.

19 Q When you were asked that on direct
20 examination, you said you weren't sure where you went
21 when you left 34 Fairview, either home or to Canton
22 P.D., correct?

23 A That's not what I testified to.

24 Q Did something jog your memory as to where you
25 went?

1 A That is not what I testified to. That was in
2 relation to where did I go after I left 34 Fairview the
3 next morning.

4 Q Why did you go to Canton Police Department
5 that night, that morning?

6 A What's the question?

7 Q Why did you go to the Canton Police Department
8 that morning?

9 A The morning when I left 34 Fairview, the
10 Friday, into Saturday?

11 Q Correct.

12 A To move to two vehicles.

13 Q There's been quite an evolution of that story
14 over the years, has there not?

15 A I don't understand the question.

16 Q All right. Let's talk about that for a
17 second.

18 You had an initial interview with
19 Massachusetts State Police on February 3rd, 2022,
20 correct?

21 A Yes.

22 Q And you indicated during the course of that
23 interview, which was just a couple of days, five days,
24 after the events in question, that you left
25 Brian Albert's house, went to Canton P.D. to, quote,

1 "fulfill some administrative obligations," end quote,
2 correct?

3 A Yes.

4 Q You later said when you testified in front of
5 the grand jury on April 28th that you went to Canton
6 P.D. to do, quote, "administrative work," correct?

7 A Yes.

8 Q You've never mentioned --

9 A I said administrative things.

10 Q You said administrative work, was your
11 testimony in your transcript.

12 A I believe it was things, but okay.

13 Q Okay. Can we agree, Mr. Higgins, that you
14 didn't mention anything about moving cars around,
15 correct?

16 A Well, that would be administrative.

17 Q So when you say, I went to Canton P.D. to do
18 administrative work or administrative obligations, you
19 meant moving your car, your personal vehicle?

20 A Yes.

21 Q Okay. Although you didn't say that you were
22 going there to move your personal vehicle, right?

23 A No. I said I didn't move my personal vehicle.
24 I moved work vehicles.

25 Q Or either one. You just traded off vehicles,

1 moved them out of the way, right?

2 A The purpose for going back there was to move
3 two work vehicles.

4 Q And the reality is that you had gotten there,
5 you had gotten to Canton P.D., earlier in the afternoon
6 and actually moved some other vehicles, traded
7 vehicles, didn't you?

8 A I swapped vehicles out. That's correct.

9 Q Right. And you left the vehicles that you now
10 claim you had to go move exactly where they were, even
11 though you knew a blizzard was coming, correct?

12 A That is correct. Yes.

13 Q So you didn't move the cars a few hours
14 earlier, knowing that you'd just have to come back and
15 move those cars a few hours later, right?

16 A I was more concerned to go eat and have a
17 drink because it had been a long day.

18 Q So wouldn't you want to move those cars early
19 on so you wouldn't have to go all the way back to
20 Canton and play, you know, parking lot with these cars
21 in the middle of the night?

22 A Not really.

23 Q Mr. Higgins, you weren't actually at Canton
24 P.D. to do administrative work at 1:30 in the morning,
25 were you?

1 A I was moving the vehicles. I'm sure it's on
2 video.

3 Q Oh, we'll talk about the video in just a
4 second.

5 You entered the Canton Police Station through
6 which door?

7 A I believe it was the door to the right of the
8 sally port as you come in the main entrance.

9 Q And you made note of who was on duty that
10 night, correct?

11 A I didn't make note. I walked by. I saw
12 somebody sitting in the control room and then just went
13 about my business.

14 Q So you immediately knew that your friend,
15 Officer Goode, was working dispatch, right?

16 THE COURT: Do you need to hear something
17 or --

18 Court Order: Jurors or Juror Issues

19 THE COURT: Why don't we take a five-minute
20 recess.

21 (Whereupon, the jurors exit the courtroom.)

22 THE COURT: So why don't we all stay here.

23 (Court resumes.)

24 (Defendant present. Jury present.)

25 THE COURT: All right. Mr. Jackson?

1 MR. JACKSON: Thank you.

2 BY MR. JACKSON:

3 Q Mr. Higgins, if you went back to Canton P.D.
4 at 1:00 o'clock, 1:30 in the morning, you would
5 certainly be in a position to monitor anything that was
6 happening at Canton P.D. at the time at least that you
7 were there, correct?

8 A No.

9 Q I mean, you would be inside the building,
10 correct?

11 A Yes.

12 Q With access to dispatch and anything else that
13 was happening around that floor, that area, correct?

14 A I did not go into dispatch.

15 Q You would have access to the interior of the
16 police station at that time if you went back to Canton
17 P.D. at 1:30 in the morning, correct?

18 A I'd have access.

19 Q You could see if there was any activity going
20 on, any calls, call-outs, things of that nature?

21 A I wasn't -- I didn't have access to that and I
22 wasn't looking for it.

23 Q Not that you were looking for it, Mr. Higgins.
24 My question is more simple than that. If you were
25 there, you'd know what was going on inside the

1 building?

2 A No.

3 Q So if you walked in, you would just be
4 completely oblivious to anything that was happening?
5 For instance, if troopers started amassing to go out to
6 a call, you wouldn't see that?

7 MR. LALLY: Objection.

8 THE COURT: The objection is sustained. Ask
9 it differently.

10 BY MR. JACKSON:

11 Q You were able to monitor, you would be in a
12 position to monitor, what was happening at the station
13 around 1:30 in the morning when you were over there,
14 correct?

15 A No.

16 Q So how long did it take you to get home from
17 Canton P.D.?

18 A A little longer -- from after I moved the
19 vehicles?

20 Q Correct.

21 A I don't know. I mean, it could have been 15
22 minutes. It could have been 20 minutes.

23 Q Do you live alone?

24 A I do.

25 Q You did then?

1 A Yes.

2 Q What did you do when you got home?

3 A I think I had something to eat and maybe a
4 couple more drinks.

5 Q Then you went to bed?

6 A I was either on the couch or in the bed,
7 watching the news.

8 Q In any of the prior testimony that you've
9 given in this case, have you ever indicated, ever, that
10 you slept on the couch that night?

11 A I don't know.

12 Q Well, you reviewed your testimony before you
13 testified here today?

14 A Those would be the two options.

15 Q Okay. I didn't ask you about your options. I
16 asked you if you reviewed your testimony before you
17 testified today.

18 A Yes.

19 Q When you reviewed your testimony previous to
20 coming in here today, did you ever testify that you
21 slept on the couch that night?

22 A No. I slept in my bed. But I could have
23 started somewhere else.

24 Q Did you ever testify in any previous hearing
25 that you started somewhere else?

1 A Not that I know.

2 Q Did you ever mention a couch in any of your
3 description about what you did when you went home that
4 night?

5 A Not that I recall.

6 Q As a matter of fact, what you did mention
7 under questioning in a different hearing was that you
8 may have gotten something to eat. You then went to
9 bed. You put your stuff on the night stand next to your
10 bed, correct?

11 A That would be the routine, yes.

12 Q You did not make or receive any calls after
13 returning home that night?

14 A No.

15 Q You were clear when you went to sleep in your
16 prior testimony that you put both your work and your
17 personal phone -- you had two at the time, correct?

18 A Yes.

19 Q A personal and a work cell phone, right?

20 A Yes.

21 Q You put them both on your bedside table
22 because that's what you do every night; is that right?

23 A Most often, yes.

24 Q As a matter of fact, you were asked whether or
25 not you have a charging station. And you said, yeah,

1 it's right on my bedside?

2 A I don't have a charging station.

3 Q Right. You said no, bedside. In other words,
4 you keep your phone by your bedside, on your bedside
5 table?

6 A Usually.

7 Q You also testified that you did not use your
8 phone that night to go on social media, correct?

9 A That's correct.

10 Q You indicated that you know you didn't go on
11 social media because you don't have social media; you
12 don't use it that much?

13 A I don't.

14 Q You said, I don't have the Gram. I'm guessing
15 that means Instagram, correct?

16 A That is correct.

17 Q And you don't use Snapchat and you, quote,
18 "don't do those things," correct.

19 A That's correct.

20 Q All right. So you testified that the first
21 call you received after returning home on the 29th was
22 a call from Chief Berkowitz just before 7:00 a.m.,
23 which woke you up; is that right?

24 A It was around 6:30-ish, I think.

25 Q Your testimony previously was, at some point

1 before 7:00 a.m., that call was the one that woke you
2 up?

3 A Yes.

4 Q And it turns out, Mr. Higgins, that that was a
5 lie, wasn't it?

6 A No. It wasn't a lie.

7 Q When you were asked that question at a
8 previous hearing, you didn't know that the person
9 questioning you had your phone records, did you?

10 A I assume they did.

11 Q And you were thereafter confronted with those
12 phone records, correct?

13 A I was asked about them, yes.

14 Q And those phone records established that you
15 and Brian Albert actually exchanged not one but two
16 phone calls at 2:22 a.m. that morning at a time when
17 you claimed you were in bed, asleep, correct?

18 A I have no recollection of any phone calls.

19 MR. JACKSON: May I approach, Your Honor?

20 THE COURT: Yes.

21 MR. JACKSON: May I approach?

22 THE COURT: Yes.

23 MR. JACKSON: Thank you.

24 BY MR. JACKSON:

25 Q Take a look at those two documents and tell me

1 if you recognize at least the top one.

2 THE COURT: Do they have a page number or no?

3 MR. JACKSON: I was just asking Ms. Little. I
4 don't think we introduced them. And no. They
5 don't have a page number. But I'm going to ask
6 that they be marked for identification at least at
7 this point.

8 BY MR. JACKSON:

9 Q Do you recognize those?

10 A Yes.

11 MR. JACKSON: May I approach?

12 THE COURT: Yes.

13 MR. JACKSON: You know what? I'm going to --
14 if it's okay with the Court, may the witness
15 maintain those documents?

16 THE COURT: Sure, sir.

17 MR. JACKSON: I'd like to have those two
18 documents marked only for identification with the
19 Court's permission?

20 THE COURT: Okay. As one exhibit?

21 MR. JACKSON: We can do it as one exhibit.
22 That's fine.

23 THE COURT: Okay. Could you please hand those
24 to Madam Court Reporter?

25 MR. JACKSON: Yes.

1 (Whereupon, phone records, two pages, were entered
2 and marked Exhibit "QQ" for Identification.)

3 THE COURT REPORTER: "QQ" for Identification.

4 THE COURT: I'm sorry. What was that?

5 THE COURT REPORTER: "QQ."

6 MR. JACKSON: Thank you. May I inquire?

7 THE COURT: Yes.

8 BY MR. JACKSON:

9 Q Mr. Higgins, do you see the document on the
10 lower right that has a page number or there is a
11 numeric indicator 01770? In other words, 1770.

12 A On the lower right-hand corner?

13 Q In the right. I mean, in the red.

14 A It says 01771.

15 Q Look at the next page. I think they are just
16 out of order.

17 THE COURT: Why don't you come show him.

18 THE WITNESS: Am I missing something?

19 MR. JACKSON: Oh. This one has been marked
20 over. It's right over the top.

21 THE COURT REPORTER: That's the protocol.

22 MR. JACKSON: It's okay. It's okay. I'll use
23 the one with "QQ" and the one with 1771 because the
24 other numbers --

25 THE WITNESS: When I'm referencing them?

1 BY MR. JACKSON:

2 Q When I'm referencing them for you.

3 A Okay.

4 Q Take a look at the one that's marked with the
5 "QQ."

6 A I see it.

7 Q You've seen that document before, correct?

8 A I think I've seen it maybe on a screen, not in
9 my hand.

10 Q That was a -- these were records that were
11 shown to you at a prior hearing?

12 A Yes.

13 Q Okay. And you acknowledged that at least the
14 one marked "QQ" is a record of your calls, correct?

15 A It has my name and my telephone number.
16 Correct.

17 Q And it indicates that on January 29th, 2022 at
18 2:22:35, you received a call from Brian Albert,
19 duration of one second, correct?

20 A Yes.

21 Q In other words, Brian Albert called you at
22 2:22:35 but it looks like you missed the call, correct?

23 A I see the one-second call, yes.

24 Q There is a second call just below that on the
25 same date at 2:22:52 from you to Brian Albert. Do you

1 see that one?

2 A Yes.

3 Q And the duration of that call is 22 seconds,
4 correct?

5 A I see that. Yes.

6 Q So 17 seconds after you missed a call,
7 according to these records, from Brian Albert, you
8 called him back. And there was a call lasting 22
9 seconds; is that right?

10 A That's what the records say.

11 MR. JACKSON: May I approach?

12 THE COURT: Yes.

13 BY MR. JACKSON:

14 Q So the fact is you were speaking to Brian
15 Albert in the middle of the night approximately three
16 hours before Mr. O'Keefe's body was found in his yard,
17 correct?

18 A No. That's not correct.

19 Q And that was five minutes before 2:27 a.m.,
20 when there was a Google search for how long to die in
21 the cold, correct?

22 MR. LALLY: Objection.

23 THE COURT: Sustained.

24 BY MR. JACKSON:

25 Q And then, of course, you lied about that under

1 oath in that prior proceeding by saying, I don't
2 remember this phone call?

3 MR. LALLY: Objection.

4 THE COURT: Sustained.

5 BY MR. JACKSON:

6 Q Did you, in fact, tell the truth at the prior
7 proceeding when you said, I don't remember that phone
8 call?

9 A I always tell the truth.

10 Q Did you lie under oath, sir?

11 A No, I did not.

12 Q Would you tell us if you did?

13 MR. LALLY: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. JACKSON:

16 Q You acknowledged that there's a 22-second
17 phone call in your phone records, correct?

18 A That's what's reflected by the record.

19 Q And 22 seconds is quite an amount of time,
20 would you agree?

21 A It's 22 seconds.

22 Q As a matter of fact, it's about this long.
23 With the Court's permission?

24 THE COURT: The Court does not give
25 permission.

1 BY MR. JACKSON:

2 Q If we were to count off 22 seconds, that's an
3 uncomfortably long time; is it not?

4 A No.

5 Q It's long enough to have a conversation, isn't
6 it?

7 A I didn't have a conversation.

8 Q Is 22 seconds long enough to have a
9 conversation?

10 A No.

11 Q You can't, us human beings, can't have a
12 conversation is 22 seconds?

13 A Sure they could. I don't think it's anything
14 of substance.

15 Q Okay. So that's my question. Is 22 seconds
16 long enough to have a conversation?

17 A I don't agree with it. No.

18 Q Now, when you were asked about this and you
19 were shown these records at that prior hearing, you had
20 an explanation for what that 22-second call may have
21 been and what the prior call may have been, correct?

22 A Yes.

23 Q What was your explanation?

24 A Well, I used a phrase that people commonly use
25 as a butt dial.

1 Q So you think it's possible that you may have
2 butt dialed Brian Albert for a 22-second call that
3 you're not aware of?

4 A I think it's possible that he could have
5 inadvertently called back. But I have no recollection
6 of that, nor did I have any conversation with anybody.

7 Q But you admitted that you lived alone,
8 correct, Mr. Higgins?

9 A That's correct.

10 Q You had an iPhone at the time?

11 A Yes.

12 Q As a matter of fact, that number reflecting
13 those records is, in fact, or was, in fact, an iPhone;
14 is that right?

15 A Yes.

16 Q You already indicated under oath that you
17 don't sleep with your iPhone. You keep it on your
18 bedside table; is that right?

19 A Most often, yes.

20 Q There's nobody else in your room; is that
21 right?

22 A That's correct.

23 Q And you had your ringer on because you were
24 awakened the next morning by a call from
25 Chief Berkowitz, right?

1 A Yes. The ringer was on.

2 Q When somebody calls you and you miss the call,
3 there is a notification that shows up on that iPhone;
4 isn't that right?

5 A I don't know how mine was set up at the time.
6 I don't know.

7 Q And, if you open up your phone app and you go
8 to "recents," it shows all the missed calls, correct?

9 A I think you can get to them, yes.

10 Q And you know that the iPhone does not
11 automatically call people back. That is not a thing,
12 right? If you miss a call from someone, it's not just
13 going to automatically re-ring them?

14 A Yes. I think we both know that. Yes.

15 Q So to call somebody back, you have to go on
16 your iPhone, open it up from a locked position,
17 navigate to a phone application, then navigate to a
18 contact and then make a call, correct?

19 MR. LALLY: Objection. Sustained. You can
20 break it down.

21 MR. JACKSON: Sure.

22 BY MR. JACKSON:

23 Q In order to call somebody back if you've
24 missed a call, you first have to unlock your iPhone?

25 A You would have to, yes.

1 Q You can do that either through face I.D. or
2 through a four- or six-digit passcode, right?

3 A Yes.

4 Q Which -- don't tell me the code, but did you
5 have a four- or a six-digit passcode locking your
6 iPhone at the time?

7 A I don't know if it was a digit code or face
8 I.D.

9 Q Well, if you have a face I.D., you have to
10 have a digit code, as well, right?

11 A I guess so.

12 Q Okay. Did you open your phone with your face
13 I.D. or a multi-digit code?

14 A I have no recollection of answering the phone
15 or calling anybody back.

16 Q You also have to navigate -- once the phone is
17 unlocked, you have to navigate to the phone app,
18 correct?

19 A I don't know necessarily if you unlocked it
20 with your face if it would be right there. I don't --
21 I have never thought about it.

22 Q Once you unlock that phone app, you have to
23 manipulate the phone on the screen with your finger in
24 order to make a call, correct?

25 A You would have to hit at least one button, I

1 guess.

2 Q At least one, right?

3 A Yes.

4 Q So that's three or four interactions with the
5 phone that have to be physically undertaken to just
6 make one call, right?

7 A But I didn't make any calls.

8 Q So how did you butt dial it?

9 A I didn't make any calls. I have no
10 recollection of any calls, nor did I speak with
11 anybody.

12 Q After you were shown these phone records at
13 that prior hearing, in that hearing, at least, you
14 finally admitted that you did, in fact, call Brian
15 Albert back, but this time you claimed the two of you
16 just sort of sat in silence; isn't that right?

17 MR. LALLY: Objection.

18 THE COURT: So I am going to sustain it in
19 that form. You can ask it appropriately,
20 Mr. Jackson.

21 BY MR. JACKSON:

22 Q Did you ever previously testify that you did,
23 in fact, make the call but you did not have a
24 conversation during the course of the call?

25 A What I think I testified was something must

1 have happened, but I didn't have any phone call.

2 Q Do you remember being asked, quote, "Did you
3 call him back," end quote? And you answered, "Yes."
4 And then there was a question --

5 A There was a series of questions there. That's
6 only a fragment of what I said.

7 Q I'm not done yet, Mr. Higgins. Can you answer
8 my question?

9 A Yes.

10 Q To the question, did you call him back, your
11 answer was, "Yes," correct?

12 A I think it was kind of, I must have.

13 Q Then you were asked -- well, the answer was
14 yes. And then there was a colloquy back and forth
15 where you spoke over each other words, right?

16 A There was dialogue back and forth about this
17 whole thing, yes.

18 MR. JACKSON: May I approach?

19 THE COURT: Yes.

20 MR. JACKSON: May I?

21 THE COURT: Yes.

22 BY MR. JACKSON:

23 Q Do you see the pink highlighted question and
24 the pink highlighted question?

25 A Yes.

1 Q What's the question? Please read it for me.

2 A "Did you call him back?"

3 Q What's the answer?

4 A "Yes. "

5 Q Thank you.

6 MR. JACKSON: May I approach?

7 THE COURT: Yes.

8 BY MR. JACKSON:

9 Q You then said a little bit further in that
10 same conversation, "I did not have a conversation,"
11 correct?

12 A I did not have a conversation with anybody.

13 Q And the question following that was, "You just
14 listened to the phone, what someone was telling you?

15 "Answer: It's possible that the phone picked
16 up on the other end and nobody said anything and then I
17 terminated the call," end quote.

18 That's what you said at the other hearing
19 under oath, correct? Yes or no.

20 A Can I see it?

21 Q Sure.

22 MR. JACKSON: May I?

23 THE COURT: Yes.

24 THE WITNESS: Thank you.

25 BY MR. JACKSON:

1 Q The bottom portion in pink. If you could read
2 that answer to yourself, please.

3 Do you have that in mind, sir?

4 A No. Can I have a minute, please?

5 MR. JACKSON: May I?

6 THE COURT: Yes.

7 MR. JACKSON: Thank you, Your Honor.

8 BY MR. JACKSON:

9 Q Does that refresh your recollection about how
10 you answered that question?

11 A Yes.

12 Q And your answer was, "It's possible that the
13 phone picked up on the other end and nobody said
14 anything and then I terminated the call. That's the
15 only thing." Correct?

16 A Meaning it's possible it could have happened.

17 Q It's possible it could have happened that you
18 had a 22-second call with Brian Albert, correct?

19 A I did not have a 22-second call with
20 Brian Albert. There was no conversation.

21 Q You've had some time to think about this 2:22
22 a.m. call, correct, since that last testimony?

23 A Time to think about it?

24 Q Yes.

25 A I haven't really thought about it, no.

1 Q So for over a year, you haven't even
2 considered the fact that you were caught with a phone
3 record, lying about not having a conversation with
4 Brian Albert at 2:22 in the morning?

5 MR. LALLY: Objection.

6 THE COURT: Sustained.

7 BY MR. JACKSON:

8 Q Mr. Higgins, what was so important that you
9 and Brian Albert needed to discuss something at 2:22 in
10 the morning?

11 A There was no discussion. I never talked to
12 Brian Albert.

13 Q Then why the 22-second phone call, sir?

14 MR. LALLY: Objection.

15 THE COURT: Sustained.

16 BY MR. JACKSON:

17 Q I want to talk about what you did after you
18 woke up on January 29th, 2022. That was obviously a
19 memorable day in your mind, correct?

20 A It was a sad day.

21 Q The very first person you spoke to after
22 waking up was who?

23 A Well, I believe I said I got the call from
24 Chief Berkowitz.

25 Q That's not my question.

1 A Say that again?

2 Q Who is the first person you spoke to on the
3 phone that morning when you woke up?

4 A Brian Albert.

5 Q Whose idea was it for you to drive to
6 Brian Albert's house that morning?

7 A It was my idea.

8 Q Was it important to you to speak with
9 Brian Albert in person rather than over text or phone
10 call?

11 A No. It was important to support the people
12 that were there.

13 Q So of course you drove over to his house, and
14 you had an opportunity to speak to him in person
15 without any law enforcement presence, correct?

16 A I was there with everybody, not just
17 Brian Albert.

18 Q And Brian Albert was in the house and you were
19 in the house, right?

20 A That's correct.

21 Q Yes. So you had access to him and others
22 without any law enforcement there; is that right?

23 A That's correct.

24 Q As soon as you got off the phone with
25 Brian Albert that morning, who did you call at 7:22

1 a.m., if you recall?

2 A I think I might have called Chief Berkowitz
3 back.

4 Q So as soon as you got off the phone with
5 Brian Albert the first thing in the morning, the next
6 call you made was to Chief Berkowitz; is that right?

7 A Yes, because he had called me first. Yes. I
8 called him back.

9 Q Did you request from Chief Berkowitz any
10 information that he may have had concerning the
11 investigation surrounding John O'Keefe being found at
12 34 Fairview that morning?

13 A No.

14 Q Were you trying to see how much law
15 enforcement knew right away?

16 A I didn't even know what happened.

17 Q Were you trying to gather information about
18 what happened so that you would know what happened?

19 MR. LALLY: Objection.

20 THE COURT: I'll allow it.

21 THE WITNESS: No.

22 THE COURT: Is that what you were trying to
23 do?

24 THE WITNESS: No, Your Honor.

25 BY MR. JACKSON:

1 Q What did Chief Berkowitz tell you about his
2 knowledge of John O'Keefe's body being found just after
3 6:00 a.m.?

4 MR. LALLY: Objection.

5 THE COURT: Sustained.

6 BY MR. JACKSON:

7 Q Did you tell Chief Berkowitz that you had been
8 with John O'Keefe and you were at the crime scene the
9 night before?

10 MR. LALLY: Objection.

11 THE COURT: Sustained. You can ask that
12 differently.

13 BY MR. JACKSON:

14 Q Did you inform Chief Berkowitz that you had
15 been with John O'Keefe the night before?

16 MR. LALLY: Objection.

17 THE COURT: I'll allow it.

18 THE WITNESS: I believe I may have told him at
19 some point that I saw John at the Waterfall.

20 BY MR. JACKSON:

21 Q Did you tell Chief Berkowitz that you had been
22 at 34 Fairview?

23 A I believe I did.

24 Q Did you tell him that your vehicle was parked
25 just feet away from where John's body was discovered?

1 A No, because I didn't know where he was
2 discovered.

3 Q Did you tell Chief Berkowitz that you and
4 Brian Albert had had a call at 2:22 in the morning?

5 MR. LALLY: Objection.

6 THE COURT: Sustained.

7 BY MR. JACKSON:

8 Q Did you tell Chief Berkowitz that you had been
9 flirting with John O'Keefe's girlfriend in the weeks
10 prior to his death?

11 A No.

12 Q Did you ever tell Chief Berkowitz about the
13 nature of your interest in Ms. Read?

14 A No. I don't believe so.

15 Q Did you tell Chief Berkowitz that you had seen
16 Mr. O'Keefe and Ms. Read the night before and that
17 Ms. Read had ignored you?

18 MR. LALLY: Objection.

19 THE COURT: Sustained. You can break that
20 down, Mr. Jackson.

21 MR. JACKSON: Thank you, Your Honor. If I may
22 have just a moment?

23 BY MR. JACKSON:

24 Q You indicated just a second ago that when I
25 asked, did you tell Chief Berkowitz that your Jeep was

1 parked just feet away from where John O'Keefe's body
2 was, you said, I had no idea where John O'Keefe's body
3 was found, correct?

4 A That's correct.

5 Q You'd just spoken with Brian Albert, right?

6 A He said in front of the house.

7 Q All he said was John O'Keefe was found in
8 front of the house? He didn't say, right outside on my
9 front lawn?

10 A I believe he said he was found out in front of
11 his house, unresponsive.

12 Q Okay. If he was out in front of his house,
13 then you would know, because your Jeep was also parked
14 out in front of his house, that your Jeep would just be
15 feet away from it, correct?

16 MR. LALLY: Objection.

17 THE COURT: Sustained.

18 BY MR. JACKSON:

19 Q Did you tell Chief Berkowitz that you had
20 texted John O'Keefe to have him come over to 34
21 Fairview just hours before he was discovered dead in
22 the yard?

23 A No.

24 Q Did you think any of that was important when
25 talking with the chief of police of the Canton Police

1 Department?

2 MR. LALLY: Objection.

3 THE COURT: I'll let him have it.

4 THE WITNESS: No, I didn't. There was no
5 reason to tell him.

6 BY MR. JACKSON:

7 Q You've been an investigator for some 15 years
8 and you were a firefighter for years before that,
9 correct?

10 A Yes.

11 Q You're very familiar with some of the tools
12 that are used in conducting modern investigations,
13 correct?

14 A Yes.

15 Q You'd agree that searching electronic devices
16 and phones is an incredibly important investigative
17 tool that modern investigators use, correct?

18 MR. LALLY: Objection.

19 THE COURT: In that form, I'll sustain it.

20 BY MR. JACKSON:

21 Q Are you aware that searching electronic
22 devices is an important part of investigations?

23 MR. LALLY: Objection.

24 THE COURT: Are you aware of that, sir? Do
25 you agree with that?

1 THE WITNESS: I've utilized phone data during
2 the course of my investigations at times, yes.

3 BY MR. JACKSON:

4 Q Okay. So another way to put that is obviously
5 phone data and electronic data is an important part of
6 an investigation; is that right?

7 MR. LALLY: Objection.

8 THE COURT: Sustained.

9 BY MR. JACKSON:

10 Q What time do you believe you got to
11 Brian Albert's house that morning after you received
12 the phone calls and woke up? What time did you make
13 your way back over to Brian Albert's house?

14 A Maybe around 7:00, 7:15. In that area.

15 Q Was there any law enforcement presence there
16 when you arrived?

17 A I can't recall specifically. There could have
18 been one police car. I'm not positive.

19 Q Did any officer ever ask you to take a look at
20 your vehicle?

21 A At what time?

22 Q That time. Actually, at any time.

23 A No, not to my knowledge. Nobody from law
24 enforcement associated with the investigation had ever
25 asked to take a look at my vehicle.

1 Q So they certainly didn't ask that day,
2 correct, on the 29th?

3 A What I'm saying is to my knowledge, nobody has
4 ever asked me that.

5 Q Right. So that's my point. I'm just trying
6 to break it down.

7 A You want to tell me every instance when
8 somebody could have asked me?

9 Q Correct.

10 A Okay.

11 Q On the 29th, were you asked whether or not
12 your vehicle could be searched?

13 A Searched or inspected?

14 Q Either one.

15 A Well, I would consider a search the inside of
16 the vehicle more so than the outside. I would consider
17 the outside more of an inspection. I would have been
18 happy to show them it.

19 Q I'm sure you would have. I'm asking did they
20 ask.

21 A No.

22 Q They didn't ask to search it? Did they ask to
23 inspect it?

24 A No.

25 Q When you met with Troopers -- who was it that

1 you met with on the 3rd of February?

2 A Trooper Proctor and Trooper Bukhenik.

3 Q Did either Trooper Proctor or Trooper Bukhenik
4 ask to inspect your vehicle or otherwise search it?

5 A Not to my recollection.

6 Q And, to this day, nobody from the
7 Massachusetts State Police has ever indicated that they
8 want to inspect your vehicle?

9 A No.

10 Q When you entered the house that morning,
11 Brian Albert was there. Nicole Albert; Jen McCabe;
12 Matt McCabe; Brian Albert, Jr; and Julie Albert were
13 all there? I'm sorry. Had Julie Albert gotten there
14 yet?

15 A She came after me.

16 Q Okay. So at some point, all the people that I
17 just ticked off, they were all inside the house, right?

18 A Brian Albert, Jr.; Nicole; Brian; Matt and
19 Jen.

20 Q You all discussed the incident together,
21 correct?

22 A I wouldn't describe it that way, no.

23 Q Did each of you discuss your own perspectives
24 about what had happened the night before and the early
25 morning hours?

1 MR. LALLY: Objection.

2 THE COURT: I'll allow it.

3 THE WITNESS: People were in shock at the
4 table, trying to figure out what happened. The
5 math didn't make sense. John and the defendant
6 never showed up. People were in shock.

7 BY MR. JACKSON:

8 Q Trying to figure out what to say, right?

9 A No.

10 Q And you were talking within earshot of each
11 other, right?

12 A We were all there in the kitchen, talking
13 together.

14 Q At this meeting -- and these were friends and
15 family, correct?

16 A Excuse me?

17 Q These were friends and family? Family amongst
18 themselves and you being a friend. These were friends
19 and family inside that house discussing this incident,
20 correct?

21 A Yes.

22 Q So at this meeting, you actually instructed
23 Jennifer McCabe to call Canton P.D. and ask someone to
24 come back?

25 MR. LALLY: Objection.

1 THE COURT: Sustained as to that form. You
2 can ask it differently.

3 BY MR. JACKSON:

4 Q At some point, did an officer come back to
5 reinterview Jen McCabe?

6 A Yes.

7 Q Jen McCabe had told you that she had
8 information about something that Ms. Read had said,
9 correct?

10 MR. LALLY: Objection.

11 THE COURT: I'll allow it. Did she tell you
12 that that morning?

13 THE WITNESS: She didn't specifically tell me
14 anything. She made a statement at the table to the
15 group of people that -- and she clearly seemed like
16 she was in shock. She was upset. And she made a
17 statement, something to the effect that Karen had
18 opined that she had hit John.

19 BY MR. JACKSON:

20 Q What she actually said was, I hope I didn't
21 hit him, correct?

22 MR. LALLY: Objection.

23 THE WITNESS: That's not what I heard, no.

24 THE COURT: That will stand.

25 BY MR. JACKSON:

1 Q Who did you ever tell this to?

2 A I've reported that.

3 Q That she said, I hit him?

4 A Yes. I've reported it.

5 Q What you reported was she said, Karen said, I
6 hope I didn't hit him. And you said, oh, you need to
7 tell Canton P.D. that; isn't that right?

8 A No. I don't think that's what I said. No.

9 Q You're as sure about that as you are about
10 that 2:22 call, right?

11 MR. LALLY: Objection.

12 THE COURT: Sustained.

13 BY MR. JACKSON:

14 Q Mr. Higgins, what time did you leave
15 Brian Albert's house?

16 A It would have been, I believe, when
17 Sergeant Lank arrived and I think Lieutenant Gallagher
18 might have been with him.

19 Q You weren't scheduled to work that Saturday,
20 correct?

21 A No.

22 Q As a matter of fact, you weren't on duty at
23 all; is that right?

24 A No, I wasn't.

25 Q But you didn't go home and get some sleep or

1 run errands. You went directly to Canton P.D. from 34
2 Fairview yet again, didn't you?

3 A Who could sleep after somebody just was
4 discovered like that?

5 Q Did you go home or --

6 A I don't believe I did, no. I believe there
7 might have been a stop at Canton P.D. before I went
8 home.

9 Q As a matter of fact, you didn't just stop at
10 Canton P.D. You spent the entire day at Canton P.D. on
11 the 29th, didn't you?

12 A I don't know that I spent the entire day
13 there, no.

14 Q Well, you've got a keycard, right?

15 A I do have a keycard.

16 Q And that keycard logs its swipes?

17 A That's correct.

18 Q So it logs where you go, access to and access
19 inside the Canton P.D., correct?

20 A Yes.

21 Q When you got to Canton P.D. -- and you're
22 telling this jury you don't know how long you spent
23 there?

24 A I don't know how long I spent there. I don't
25 know if I left and I came back. I don't recall.

1 Q Okay. So if the records indicate that you
2 were there from 9:00-a.m.-ish to after 5:00 --

3 A I don't know how the records would indicate
4 that.

5 Q I'll show you in a second.

6 A Okay.

7 Q While you were at Canton P.D., did you speak
8 again to Brian Albert?

9 A I don't remember.

10 Q While you were at Canton P.D., did you speak
11 again to Chief Berkowitz?

12 A Most likely.

13 Q While you were at Canton P.D., did you speak
14 with Brian Albert's brother, Kevin Albert?

15 A I don't believe so.

16 MR. JACKSON: Your Honor, may I approach?

17 THE COURT: Yes.

18 BY MR. JACKSON:

19 Q That's a 176-page document. Obviously, don't
20 read the whole thing. Just glance through it and tell
21 me if you recognize what that is.

22 A So it says, "Canton Police. All events logged
23 by" --

24 THE COURT: So don't read it out loud.

25 THE WITNESS: Oh, I'm sorry, Your Honor.

1 THE COURT: Just do you recognize it?

2 THE WITNESS: Yes, I do.

3 MR. JACKSON: May I approach?

4 THE COURT: Yes.

5 BY MR. JACKSON:

6 Q This appears to be a log of key swipes in and
7 around Canton P.D., correct?

8 A Yes.

9 Q And it's in reverse chronological order, in
10 other words --

11 A I didn't note that, but okay.

12 Q Okay. You acknowledge that that is a record
13 of the key swipes that everybody uses moving in and
14 around Canton P.D., going through doors. Every place
15 that needs a key swipe is logged --

16 A I would assume that's what that is, yes.

17 Q All right. It shows that you entered Canton
18 P.D. for the first time on the 29th at 1:27 a.m. Does
19 that sound about right, when you got there you say to
20 move your cars?

21 A It's possible.

22 Q All right. It shows that you were granted
23 access to Floor Corridor 227. Does that mean anything
24 to you?

25 A No.

1 Q What about Floor Corridor 226 on the second
2 floor?

3 A The second floor would make sense because I
4 went in the building and then to the second floor.

5 MR. JACKSON: If I may have just a moment,
6 Your Honor?

7 THE COURT: Sure.

8 BY MR. JACKSON:

9 Q By the way, did Brian Albert ever mention what
10 time the officers cleared the scene?

11 A No.

12 Q Without telling me the substance of the
13 conversation, did he tell you when he talked to you at
14 7:20 or thereafter?

15 A Not that I recall, no.

16 Q But you remember by the time you got there
17 that the scene had basically been cleared? There
18 wasn't much of emergency vehicles, crime scene tape,
19 nothing like that?

20 A I didn't see fire trucks. I might have saw a
21 cruiser. I can't be sure. I don't recall.

22 Q But you're not sure about that even?

23 A I'm sorry?

24 Q You're not sure about even seeing a cruiser,
25 correct?

1 A Not 100 percent, no.

2 Q You certainly were not contacted by a law
3 enforcement who took your name and I.D. or anything
4 like that?

5 A No, no, no.

6 Q You just parked and walked in the house?

7 A Yes.

8 MR. JACKSON: Your Honor, may I approach one
9 more time?

10 THE COURT: Yes.

11 MR. JACKSON: I'd like to have that document
12 marked as next in order. It represents Bates pages
13 2850 to 3016.

14 THE COURT: All right. So marked for
15 identification. Is there an agreement that this
16 comes in, Mr. Lally?

17 MR. LALLY: There is not, no.

18 THE COURT: So that's marked for
19 identification.

20 (Whereupon, packet of documents re: key swipe
21 records, Canton Police Department, January 29,
22 2022, was entered and marked "RR" for
23 Identification.)

24 THE COURT REPORTER: That will be "RR" for
25 Identification.

1 MR. JACKSON: May I proceed?

2 THE COURT: Yes.

3 BY MR. JACKSON:

4 Q Mr. Higgins, if you will look at Bates page
5 3015, which actually is in order -- that's not in
6 reverse chronological -- the second to the last page.

7 A I have it.

8 Q Can you take a look at the eighth entry from
9 the bottom?

10 A I see it.

11 Q Does that indicate that this all occurred on
12 1/29/22, this entry, at least?

13 A Well, I mean, I only -- on that eighth entry,
14 I see that that's associated with my name. I don't
15 know what the other ones are associated with.

16 Q Right. It would be other individuals in
17 Canton P.D. I mean, this is the entire log for 1/29,
18 right?

19 A Okay. But all I'm saying is just my name is
20 next to that. I don't see any other names.

21 Q Right.

22 A Okay.

23 Q So on 1/29/2022 -- I'm just trying to orient
24 you -- at 1:27:52, access granted, Brian Higgins, rear
25 entry to secure corridor, rear entry to secure

1 corridor, correct?

2 A Yes.

3 Q All right. So that appears to be what the log
4 entry or the key swipe entry looks like when it's
5 logged, correct?

6 A Yes.

7 Q All right. If you look at page 2967 -- I'm
8 sorry. I said it backwards. 2976.

9 A Okay.

10 Q Take a look at --

11 A You said 2976?

12 Q That's Bates page 2976. That's the bottom
13 right-hand --

14 A I see it. Yes.

15 Q Look at the time entry for 9:23:39.

16 A 9:23 and what?

17 Q Thirty-nine.

18 A And that's on 2976?

19 Q It should be.

20 A Give me the time again, please?

21 MR. JACKSON: Why don't we do it this way.

22 May I approach?

23 THE COURT: Yes.

24 BY MR. JACKSON:

25 Q This is an exact copy.

1 A Yes. There's times all over the place. My
2 apologies.

3 Q That's fine.

4 A All right. Thank you.

5 Q At 9:23:39 -- I'm sorry. Have you got that in
6 mind?

7 A I do. I see it.

8 Q At 9:23:39, that shows that you were granted
9 access to the sally port, to front exit, front entry to
10 sally port, correct?

11 A Yes.

12 Q There is only one sally port at Canton P.D.,
13 correct?

14 A Yes. And there is a door on each side of the
15 sally port.

16 Q Two bay doors, right?

17 A Two bay doors on each side, yes.

18 Q And then there is a personal pass-through
19 door, as well?

20 A Yes.

21 MR. JACKSON: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MR. JACKSON:

24 Q I want to try to speed this up just a bit
25 because it's small print, reverse chronological order.

1 On page 2976, there is also an entry, same
2 page -- it should be right above that, 9:23:50 --
3 showing you were granted access from booking to sally
4 port, as well, correct?

5 A Page 2976?

6 Q The same page.

7 A Yes.

8 Q It's about maybe six entries above. Six
9 entries up. You'll look for time 9:23:50.

10 A I see it. Yes.

11 Q All right. And that shows that you were
12 granted access to the sally port and then from sally
13 port to booking, correct?

14 A It says, booking to sally port, sally port to
15 booking.

16 Q Okay. So that's a key swipe of you either
17 entering into the sally port from booking or from
18 booking into the sally port, right?

19 A Yes.

20 Q Okay.

21 THE COURT REPORTER: Could you repeat the
22 question?

23 MR. JACKSON: Of course. Of course.

24 (Whereupon, there was a brief pause.)

25 MR. JACKSON: May I inquire, Your Honor?

1 THE COURT: Yes.

2 MR. JACKSON: I have no idea what the last
3 question was. I'll see if I can make a new one up.

4 BY MR. JACKSON:

5 Q At 9:23:50 in the morning, you were granted
6 access, booking to sally port and sally port to
7 booking, meaning you swiped the keycard in the door,
8 going from booking to sally port?

9 A Yes.

10 Q Okay. I don't want to belabor this because we
11 could get bogged down into it all day long.

12 Would you have any quarrel if those logs
13 indicated that you were moving in and around Canton
14 P.D. at 9:28, 9:53, 9:53, 9:54, 9:54, 11:40, et cetera?
15 We can look at every one of them if you want to. Does
16 it refresh your recollection?

17 A It would not be uncommon for me to move around
18 Canton P.D. at various times and dates, middle of the
19 night, during the day. But just because I swiped in
20 somewhere and then you have a swipe at the end of the
21 day doesn't mean I was there the whole day. I could
22 have left. I could have come back. And I truly don't
23 have a recollection. But I'm pretty sure I wasn't
24 there all day.

25 Q Fair enough. If we moved from 11:40 to 11:44,

1 11:45, 11:47, 11:51, 11:52 and then jump to 2:05, would
2 that be an explanation where you might have gone out
3 for lunch at 11:52?

4 A Could have.

5 Q Okay, and come back.

6 A Yes.

7 Q If there is a 2:05:56 entry, then obviously
8 you're there, right?

9 A If the card was swiped, I was there.

10 Q I mean, you're not giving that card to anybody
11 else?

12 A No, I'm not.

13 Q No way, right? Let's just look at 2905,
14 because I want you to be comfortable. Page 2905, and
15 let's look at that 2:05:56 entry.

16 A I'm at 2905. Where would you like me to look?

17 Q About right there. Basically in the middle of
18 the page.

19 MR. JACKSON: May I approach?

20 THE COURT: Yes.

21 MR. JACKSON: This might be a little easier.

22 BY MR. JACKSON:

23 Q I'll highlight it for you.

24 A I see it.

25 Q Okay. So that would indicate that you were

1 back at Canton P.D. at at least 2:05:56 and you were
2 granted access, sally port to front door, correct?

3 A That's what it says. Yes.

4 Q Okay. At 3:10 p.m., you called Brian Albert's
5 brother, Kevin Albert, correct?

6 A I don't know. It's possible.

7 Q Okay.

8 A I mean, I don't recall every phone call I made
9 that day.

10 Q Understood. Do you remember talking to
11 Kevin Albert?

12 A I don't.

13 Q So you don't remember what you discussed with
14 him?

15 A No. No.

16 Q Do you remember that it was a 12-minute phone
17 call?

18 A No. I don't remember having any phone call,
19 but I'm sure it's possible that we spoke.

20 Q Do you remember Kevin Albert providing you
21 any information about the ongoing investigation into
22 John O'Keefe's death?

23 A No.

24 Q Did you ask him about additional information
25 concerning John O'Keefe's death?

1 A No.

2 Q Were you providing details back to
3 Brian Albert that you were receiving while at Canton
4 P.D.?

5 A Absolutely not, no.

6 Q Do you recall that two minutes after you
7 cleared the call with Kevin Albert, you then called
8 Brian Albert?

9 A It's possible.

10 THE COURT: So I think the question was do you
11 remember. Do you remember that?

12 THE WITNESS: Your Honor, there was a lot of
13 phone calls made that day. It was an upsetting
14 day. I spoke to multiple people at multiple times.
15 I don't have a recollection. I'm sorry.

16 MR. JACKSON: May I approach briefly?

17 THE COURT: Yes.

18 THE WITNESS: Thank you.

19 BY MR. JACKSON:

20 Q Just to close this loop, that appears to be
21 your phone record, correct?

22 A Yes.

23 Q And it appears that you made a call at 3:10
24 for 12 minutes with Kevin Albert, correct?

25 A Yes.

1 Q 3:10 plus 12 is 3:22, correct?

2 A Yes.

3 Q So you had cleared the call about 3:22; is
4 that right?

5 A Yes.

6 Q And then it shows a 3:24 phone call -- I'm
7 sorry. Brian Albert then calls you at 3:24, correct?

8 A Yes.

9 Q And you two speak for six minutes; is that
10 right?

11 A Six minutes, five seconds. Yes.

12 MR. JACKSON: May I approach.

13 THE COURT: Yes.

14 BY MR. JACKSON:

15 Q Does that refresh your recollection that you
16 made those calls?

17 A Based on the record, yes.

18 Q Was that just a coincidence that you were
19 talking to Brian Albert and Kevin Albert within minutes
20 of one another?

21 A I mean, there was a lot going on that day.
22 People were upset. And I don't remember the phone
23 calls. I don't deny making the phone calls. I just
24 don't remember them.

25 Q Do you remember providing information that you

1 were learning from Kevin Albert to Brian Albert?

2 A Absolutely not.

3 Q And then --

4 MR. JACKSON: May I, Your Honor?

5 THE COURT: Yes.

6 BY MR. JACKSON:

7 Q If you'll look just below those phone calls to
8 Kevin Albert and Brian Albert, there's two additional
9 phone calls that you had with Chief Berkowitz and then
10 Brian Albert again, correct?

11 A Yes.

12 Q Mr. Higgins, it looks an awful lot like you're
13 gleaning information from Canton P.D. Were you doing
14 that?

15 MR. LALLY: Objection.

16 THE COURT: So I'll sustain the objection in
17 that form. You can ask one part of that question.

18 MR. JACKSON: Sure.

19 BY MR. JACKSON:

20 Q Were you getting any information from Canton
21 P.D.?

22 A No, I wasn't.

23 Q Did you provide any information to
24 Brian Albert?

25 A No, I did not.

1 Q Based on any conversations or conduct at
2 Canton P.D.?

3 A No.

4 MR. JACKSON: May I approach?

5 THE COURT: Yes.

6 BY MR. JACKSON:

7 Q But you were, in fact, on the phone with all
8 of those interested parties throughout the day, you'll
9 agree?

10 THE COURT: You can answer that. There is no
11 objection.

12 THE WITNESS: Yes. They're friends, and I was
13 on the phone with them. Yes.

14 BY MR. JACKSON:

15 Q And, sir, you were not on duty that day,
16 correct?

17 A No.

18 Q You were not a Canton police officer, correct?

19 A That's correct.

20 Q You were not assigned to this investigation in
21 any formal capacity, were you?

22 A I was not.

23 Q As a matter of fact, you're a witness in a
24 homicide investigation. That's your only role in this,
25 correct?

1 A That's correct. But they're still my friends.
2 Yes.

3 Q And yet you are still having conversations
4 with Kevin Albert at Canton P.D. while you're at Canton
5 P.D., correct?

6 A Not about this.

7 Q And you're having conversations with
8 Chief Berkowitz of Canton P.D. while you're at Canton
9 P.D., correct?

10 A I had conversations with them but not about
11 this, no.

12 Q And you're consistently through the day
13 calling Brian Albert, aren't you?

14 A I had conversations with Brian Albert. John
15 was found on his lawn. Yes. Of course I had phone
16 conversations with him.

17 Q I want to take you back for a second to a
18 couple of other sally port entries, including one at
19 3:57, one at 3:58 and one at 4:07. I'm going to draw
20 your attention to 2885 and 2886. Once you have the
21 pages, I'll give you the times once again.

22 A 2885?

23 Q 2885 and 2886. We will start with 2886 and
24 then work backward.

25 A Okay.

1 Q The first entry is at 3:57:54.

2 A 3:57:54. I see it.

3 Q Brian Higgins, booking to sally port, correct?

4 A It says, Brian Higgins, communication to
5 pedestrian sally port, communication to pedestrian
6 sally port.

7 Q Look at the one just above it. That's
8 3:58:24. Look at 3:57:54. It's probably going to be
9 just below it because it's reverse.

10 A You said 3:57:54, correct?

11 Q Correct.

12 A That's what I just read.

13 Q Got it. Look at five, six entries below it.

14 A 3:57:36. I see it. Access granted, Brian
15 Higgins, booking to sally port, sally port to booking.

16 Q Then there is one more on page 2885. Look for
17 4:07:47.

18 A 4:07:47?

19 Q Correct.

20 A I have it. Access granted, Brian Higgins,
21 booking to sally port, booking to sally port.

22 Q And there is no record in that document of you
23 exiting, correct? That's just booking to sally port?

24 A Yes. I don't -- yeah. There's no record. I
25 don't know if --

1 Q That's all. You've answered my question.
2 There is no record of it, correct?

3 A Not that I can see here, no.

4 Q And you're aware that that's about 90 minutes
5 before Karen Read's SUV was delivered to that sally
6 port, correct?

7 A No. I'm not aware of that.

8 Q Are you aware that her car ended up in that
9 sally port where you were at 5:36?

10 A I'm aware her car ended up there, yes.

11 Q Are you aware that there was other evidence
12 that was also being held in the sally port?

13 MR. LALLY: Objection.

14 THE COURT: Sustained.

15 BY MR. JACKSON:

16 Q Did you see any other evidence in the sally
17 port related to this case?

18 A No.

19 Q Did you see a bag, a grocery bag, with six
20 Solo cups there?

21 MR. LALLY: Objection.

22 THE COURT: Sustained.

23 BY MR. JACKSON:

24 Q Did you see anything that seemed out of the
25 ordinary there?

1 A All I would do is use that as a cut-through.
2 I did not see anything.

3 Q Are you aware that at -- well, let me ask you
4 this: You and Chief Berkowitz were moving in and
5 through at least in some parts of the day, in and
6 through Canton P.D. together, correct?

7 A At some points we might have been together.
8 I'm not -- I mean, we weren't together all day.

9 Q As a matter of fact, he was also in the sally
10 port around the same time you were, correct?

11 A I don't recall that, no.

12 Q But the records would reflect that, correct,
13 the records that are in front of you?

14 MR. LALLY: Objection.

15 THE COURT: Sustained.

16 BY MR. JACKSON:

17 Q You were in the sally port. The last time you
18 were logged into the sally port, it's 4:07. Do you
19 remember seeing Chief Berkowitz at sally port at 4:14?

20 A No. And, if that says that I'm logged, that
21 could be me cutting through.

22 Q Mr. Higgins, all I'm asking you -- I'm not
23 asking you what you did. I'm asking you where you
24 were.

25 A I don't know where I was at that specific

1 time.

2 Q Well, you walked into the sally port. We know
3 that.

4 A If I walked in --

5 Q Correct?

6 A -- I was cutting through. Yes.

7 Q Right. Was Chief Berkowitz in the sally port
8 at 4:14?

9 A Not that I recall, no.

10 Q Was he there at 4:30?

11 A I don't remember ever seeing him in the sally
12 port, no.

13 Q Was he there at 4:33?

14 A I don't remember ever seeing Chief Berkowitz
15 in the sally port.

16 Q At 4:50?

17 MR. LALLY: Objection.

18 THE COURT: Sustained. Let's move through
19 this, please.

20 BY MR. JACKSON:

21 Q Finally, was he there at 5:36:37 at the same
22 time Karen Read's vehicle was delivered?

23 A I don't remember.

24 Q Do you remember Chief Berkowitz -- or were you
25 with Chief Berkowitz when he made a call to the front

1 desk?

2 A No. I don't remember anything like that. No.

3 Q Do you remember Chief Berkowitz calling the
4 front desk at 5:42 and saying, shut the barracks?

5 MR. LALLY: Objection.

6 THE COURT: Sustained.

7 BY MR. JACKSON:

8 Q Do you remember any kind of call shutting the
9 barracks, meaning shutting the sally port?

10 MR. LALLY: Objection.

11 THE COURT: Do you remember that?

12 THE WITNESS: I don't remember anything like
13 that, Your Honor.

14 THE COURT: Okay. Next question.

15 BY MR. JACKSON:

16 Q You didn't leave Canton P.D. until close to
17 6:00 p.m., isn't that right?

18 A I don't know what time I left.

19 Q Could it have been 5:50, 6:00 o'clock?

20 A I don't recall what time I left.

21 Q You're aware that there's video surveillance
22 feeds in the sally port garage, correct?

23 A That's correct, yes, around the building.

24 Q Were you in the sally port at 5:36 when the
25 car was delivered?

1 A I don't have any recollection of that, no.

2 Q It's one thing to say "I don't remember."

3 It's another thing to say "No, I was not there."

4 A I don't remember being there, no.

5 Q Is it possible that you could have been there
6 when that car was delivered?

7 A I don't believe I was, no.

8 Q You don't believe you were or --

9 A I don't believe I was, no.

10 Q You're aware that the video surveillance feed
11 from the sally port garage at or around 5:36, the
12 precise time when the car was delivered, is missing,
13 right?

14 MR. LALLY: Objection.

15 THE COURT: Sustained.

16 BY MR. JACKSON:

17 Q Did you receive a flurry of phone calls from
18 Brian Albert and Chief Berkowitz indicating that some
19 taillight pieces or a taillight piece had been
20 recovered at 34 Fairview later that evening?

21 MR. LALLY: Objection.

22 THE COURT: Sustained.

23 BY MR. JACKSON:

24 Q Did you receive a call at all, without telling
25 me what the conversation consisted of, around 6:12 p.m.

1 from Brian Albert?

2 A I don't -- I don't know what day you're
3 referring to.

4 Q The 29th.

5 A No. I don't remember any phone calls like
6 that.

7 Q Do you remember three minutes later getting
8 another call from Chief Berkowitz at 6:16 p.m. that
9 lasted about five minutes and 16 seconds?

10 A No.

11 MR. JACKSON: May I approach?

12 THE COURT: Yes.

13 BY MR. JACKSON:

14 Q If you'd look at the entries for 6:12 and 6:16
15 and see if that refreshes your recollection.

16 A Are you referring to the --

17 Q 6:12 and 6:16.

18 A Okay. I see those. Yes.

19 Q There was a call at 6:12 that Brian Albert
20 made to you for a duration of one minute and seven
21 seconds, correct?

22 A Yes.

23 Q And, right after that, there was a call from
24 Chief Berkowitz to you at 6:16, at 6:16, that lasted
25 five minutes and 15 seconds, correct?

1 A Yes.

2 MR. JACKSON: May I approach?

3 THE COURT: Yes.

4 BY MR. JACKSON:

5 Q Are they telling you that taillight pieces had
6 been found at the location?

7 MR. LALLY: Objection.

8 THE COURT: Sustained.

9 MR. JACKSON: Your Honor, may we approach
10 briefly?

11 (Whereupon, there was a sidebar conference as
12 follows:)

13 THE COURT: Okay. So why don't you go ahead
14 and state your objection on the record, Mr. Lally.

15 MR. LALLY: Number one, hearsay. Number two,
16 he's asking about content of phone calls that he
17 has already testified he doesn't remember having.

18 THE COURT: What do you say, Mr. Jackson?

19 MR. JACKSON: It's not offered for the truth
20 of the matter asserted but for the effect on the
21 listener, as well as the state of mind of both
22 declarants. Chief Berkowitz and Brian Albert both
23 insisted on informing this witness completely and
24 inappropriately about conduct that was being done
25 at the crime scene at the time, and he was being

1 informed and updated constantly. He is a witness.
2 He is not a law enforcement officer. In that
3 capacity, it's completely inappropriate that those
4 lead the biased investigation, literally infusing
5 or inviting witnesses into the inner workings of an
6 investigation.

7 THE COURT: The objection is sustained. He
8 denied all that and said he didn't remember having
9 these conversations.

10 MR. JACKSON: Okay.

11 THE COURT: So sustained.

12 (Whereupon, the sidebar conference concluded.)

13 MR. JACKSON: May I inquire?

14 THE COURT: Yes.

15 BY MR. JACKSON:

16 Q So your testimony is that you don't recall the
17 substance of those conversations at 6:12 and 6:16?

18 A I don't, no.

19 Q Isn't it true that you were asked about those
20 phone calls at another hearing?

21 A I might have been. I don't recall.

22 Q And did you testify at the other hearing that,
23 in fact, what was discussed was the substance of the
24 taillights being found at the location?

25 A No. That's not what that was in reference to.

1 Q Were you being provided information from your
2 friend, Chief Berkowitz, about the progress of the
3 investigation?

4 A No.

5 Q Were you providing your friend, Brian Alberts
6 (sic) -- Brian Albert, information about the progress
7 of the investigation or what you perceived it to be?

8 A No. I didn't have any information on the
9 investigation.

10 MR. JACKSON: May I have just a moment, Your
11 Honor?

12 THE COURT: Sure.

13 BY MR. JACKSON:

14 Q You were not interviewed about this case in
15 any formal capacity until five days later, correct?

16 A That sounds about right.

17 Q February 1st. Trooper Proctor.

18 A I'm not exactly sure of the date, but it was
19 several days after. Yes.

20 Q I'm sorry. I said February 1st. It may have
21 been February 3rd.

22 A I don't know the date, but we were into
23 February.

24 Q Where did that interview take place?

25 A Sharon, Mass.

1 Q I'm sorry?

2 A Sharon, Mass.

3 Q At what location?

4 A I'm sorry?

5 Q What location?

6 MR. LALLY: Objection.

7 THE COURT: I'll see counsel very quickly.

8 (Whereupon, there was a sidebar conference as
9 follows:)

10 THE COURT: Is this at the home of his lawyer?

11 MR. JACKSON: Correct.

12 MR. LALLY: Yes.

13 THE COURT: Why do you need the location?

14 MR. JACKSON: Because that is absolutely
15 inappropriate. This witness was being given
16 special dispensation, special treatment that would
17 never happen in any investigation I've ever heard
18 of or that the Court has ever heard of. You
19 investigate a witness in a homicide investigation
20 who was in the house at the time a person died and
21 you go to their lawyer's house? That is a special
22 treatment, and I think the jurors are entitled to
23 weigh and balance that.

24 THE COURT: Was his lawyer sick at the time?

25 MR. LALLY: I believe so, yes.

1 MR. JACKSON: Says who? How do we know that?

2 THE COURT: Because I read who his lawyer is.
3 He was very ill.

4 MR. JACKSON: Well, I wouldn't know that. I'm
5 not trying to be insensitive.

6 THE COURT: No.

7 MR. JACKSON: I think he can say it. I think
8 that is --

9 THE COURT: Not at this point. I'll think
10 about it but not right now.

11 MR. JACKSON: Okay. By the way, I am not
12 going to finish. I thought I was going to finish
13 but -- may I have just a moment?

14 THE COURT: Yes.

15 (Whereupon, there was a discussion off the record.)

16 MR. JACKSON: I'm going to hurry along. I'm
17 going to turn up the -- I'm going to try to finish
18 by 4:30.

19 THE COURT: All right. And then is one of
20 your colleagues going to stand in for the redirect
21 on Tuesday?

22 MR. JACKSON: If it's necessary, yes.

23 THE COURT: Is there redirect?

24 MR. LALLY: Yes.

25 THE COURT: Okay. So I'll need a colloquy

1 with your client here at sidebar. I'll excuse the
2 jurors first. I've got to let them go at 4:30.

3 MR. JACKSON: Understood. I totally
4 understand.

5 (Whereupon, the sidebar conference concluded.)

6 MR. JACKSON: May I?

7 THE COURT: Yes.

8 BY MR. JACKSON:

9 Q The interview was not at a police station?

10 A It was not, no.

11 Q By the time you interviewed with
12 Trooper Proctor, you had already had numerous
13 conversations with Brian Albert; is that safe to say?

14 A Well, the interview was with both
15 Trooper Proctor, Sergeant Bukhenik. And of course I've
16 talked to Brian Albert because of what took place.

17 Q Mr. Higgins, that was a yes-or-no question.

18 A Of course I've talked to him, yes.

19 Q Okay. And the answer is yes, right? Can we
20 agree?

21 A The answer is yes.

22 Q Thank you. By the time you spoke with
23 Trooper Proctor and Trooper Bukhenik, you had already
24 had numerous conversations with Chief Berkowitz,
25 correct?

1 A Yes.

2 Q You had already had numerous conversations
3 with Kevin Albert?

4 A Yes.

5 Q You had already had this meeting with the
6 Alberts and the McCabes over at 34 Fairview; is that
7 right?

8 A I went to the house.

9 Q And discussed this case as you earlier
10 described in your testimony?

11 A I discussed what -- we were trying to figure
12 out what happened.

13 Q You discussed this case, Mr. Higgins?

14 A Well, at that point, it wasn't a case.

15 Q Okay. I'm not parsing words about what a case
16 is versus a matter, versus an issue. You understand my
17 question, didn't you?

18 A Yes.

19 Q Is there a reason you don't want to answer
20 that question?

21 A I don't have a problem

22 MR. LALLY: Objection, Your Honor.

23 THE COURT: Well, is there a reason, or why
24 don't you go ahead and explain.

25 THE WITNESS: Well, I feel like you're trying

1 to make it sound like something it wasn't. It --

2 BY MR. JACKSON:

3 Q I'm not trying to make it sound like anything,
4 sir. I'm asking a question.

5 Had you discussed this case or the issues
6 surrounding this case with those folks at 34 Fairview?

7 A I discussed things when I went back to the
8 house, yes.

9 Q And that was before you met with
10 Trooper Proctor and Trooper Bukhenik, correct?

11 A Yes. That's correct.

12 Q You had already spent an enormous amount of
13 time at Canton P.D. We've just gone through those
14 records; is that right?

15 A I have been at Canton P.D. Yes.

16 Q And you had been able to talk to -- you had
17 access, at least, to all of the officers, correct?

18 A What do you mean --

19 Q Anybody that was coming and going at Canton
20 P.D.

21 A Access for what purpose?

22 Q Just to walk by them, to hear what they were
23 saying, to see what they were doing.

24 A That's not what I was doing, no.

25 Q I'm not accusing you of doing anything. I'm

1 saying you had access to the individuals within the
2 Canton P.D., correct?

3 A To interact if needed, yes.

4 Q And, very obviously, you had access to the
5 sally port?

6 A I had access, yes. And that's a cut-through I
7 used all the time.

8 Q And anything that was in it, correct?

9 A I wouldn't need anything in it.

10 Q It was only after all that that Michael
11 Proctor thought that you were worthy of a conversation?

12 MR. LALLY: Objection.

13 MR. JACKSON: I'll rephrase that. I'll
14 rephrase it.

15 BY MR. JACKSON:

16 Q It was only after all of that that you were
17 interviewed by Michael Proctor and Trooper Bukhenik,
18 correct?

19 A I wasn't interviewed until the following days.
20 That's correct.

21 Q At some point on February 4th,
22 Chief Berkowitz called you to formally -- I'm sorry --
23 to personally inform you that he had personally found
24 taillight at 34 Fairview; is that right?

25 A He did tell me that, yes.

1 Q And, to be clear, that's the same
2 Ken Berkowitz that you were with in the sally port?

3 A I don't recall being in the sally port with
4 him, no.

5 Q What did you do with that information when you
6 learned from Chief Berkowitz that he, personally, saw a
7 taillight piece as he drove by?

8 A I didn't do anything with the information.

9 Q Did you call Brian Albert?

10 A No. Brian Albert called me.

11 Q You were asked this specific question in the
12 other proceeding in June of 2023, correct?

13 A I don't know if it was the specific question.
14 I was asked a series of questions on how the phone
15 calls came in. That's what I was asked.

16 Q And your answer was, it's 100 percent probable
17 that I told him about that, meaning I told Brian Albert
18 about my conversation with Ken Berkowitz, correct?

19 A It's possible.

20 Q Was that your statement or not?

21 A It was my statement then, but I've thought
22 about it. Yes.

23 Q And you've changed your statement somehow?

24 A I don't know if I changed my statement. But I
25 think the way the phone calls came in is Brian Albert

1 told me, you're not going to believe what was found on
2 the front lawn. And then I believe Ken Berkowitz told
3 me he found the taillight. And I'm referring to the
4 taillight from the both of them. I didn't provide any
5 information to anybody. Information was provided to
6 me.

7 Q (As read), "Well, what you actually said was,
8 it's 100 percent probable that I told him about that.
9 Yes. One hundred percent. I'm not hiding that fact.
10 But you're asking me if I recollect specifically. I
11 know I called him after that phone call."

12 MR. LALLY: Objection, Your Honor.

13 THE COURT: All right. Too many facts. Go
14 slowly.

15 MR. JACKSON: Sure.

16 BY MR. JACKSON:

17 Q You said (as read), "Yes, one hundred
18 percent," correct?

19 A In that testimony, I did, yes.

20 Q And then in that testimony, you went on to say
21 (as read), "I'm not hiding that fact. But you're
22 asking me if I recollect specifically," correct?

23 A I don't have it in front of me. That's what
24 you're telling me.

25 Q You went on to say (as read), "I know I called

1 him after that phone call," correct?

2 A I don't know.

3 Q And you went on to say (as read), "If that's
4 when Chief Berkowitz told me. If I -- listen, I didn't
5 do anything wrong in this," end quote.

6 That was your statement in the prior hearing,
7 correct?

8 MR. LALLY: Objection.

9 THE COURT: I'm going to strike the end.

10 MR. JACKSON: Your Honor, may I?

11 THE COURT: Yes.

12 BY MR. JACKSON:

13 Q You said you don't recall that entire
14 testimony, right?

15 A Not that portion, but I know I was asked about
16 how the phone calls came in and what was said.

17 Q Do you think it would refresh your
18 recollection to see a transcript of your answer?

19 A Is this it right here?

20 Q That's it, in pink.

21 A I'll read it.

22 MR. JACKSON: May I, Your Honor?

23 THE COURT: Yes.

24 MR. JACKSON: Thank you.

25 BY MR. JACKSON:

1 Q Does that refresh your recollection as to what
2 your testimony was under oath in June of 2023?

3 A I do.

4 Q And you said (as read), "If that's what
5 Chief Berkowitz told me. If I -- listen, I didn't do
6 anything wrong in this," correct?

7 A That was the statement I made, yes.

8 Q Why did you say, listen, I didn't do anything
9 wrong in this?

10 MR. LALLY: Objection.

11 THE COURT: Why did you say that?

12 THE WITNESS: Because I felt they were being
13 accusatory, and I was trying to explain what was
14 going on. And what I had said over that was, I
15 can't -- I believe what I said, something to the
16 effect, I can't be 100 percent positive.

17 And then when I -- I went on to say, it's
18 probable. But I felt like they were being
19 accusatory. And I was trying to explain how the
20 phone calls came in. I've had time to reflect
21 about it after that since that testimony. That
22 information about the taillight that was found was
23 provided by each person. I didn't provide any
24 information to anybody.

25 THE COURT: Next question.

1 MR. JACKSON: Thank you.

2 BY MR. JACKSON:

3 Q You said, look, I didn't do anything wrong in
4 this, because it looks like you and Ken Berkowitz were
5 colluding to provide information to Brian Albert,
6 correct?

7 MR. LALLY: Objection.

8 THE COURT: Is that correct?

9 THE WITNESS: Absolutely not correct. That's
10 wrong.

11 BY MR. JACKSON:

12 Q And you knew that was going to look like
13 collusion, which is why you said, look I didn't do
14 anything wrong in this, correct?

15 MR. LALLY: Objection.

16 THE COURT: The objection is sustained.

17 BY MR. JACKSON:

18 Q Mr. Higgins, if you wanted to get rid of --
19 and you've dealt with cell phones and electronic
20 devices in your career many, many times, correct?

21 A All my career. Yes.

22 Q You've probably even written search warrants
23 for them and things of that nature, right?

24 A Yes.

25 Q If you wanted to destroy evidence on your cell

1 phone, what kind of steps might you take to do that?

2 MR. LALLY: Objection.

3 THE COURT: Sustained.

4 BY MR. JACKSON:

5 Q If you wanted to just get rid of information
6 on your cell phone that would be unrecoverable, what
7 steps might you take?

8 MR. LALLY: Objection.

9 THE COURT: Sustained.

10 BY MR. JACKSON:

11 Q Do you know how to get rid of information on
12 your cell phone?

13 MR. LALLY: Objection.

14 THE COURT: That's allowed. You can answer
15 that.

16 THE WITNESS: Do I know how to get rid of
17 information? I mean, I think there's different
18 ways. Possibly you could wipe your phone.

19 BY MR. JACKSON:

20 Q Anything else?

21 A You could wipe your phone. Factory reset.

22 Q Factory reset might be one. Wiping your
23 phone. Taking the SIM card out?

24 A I don't know that the SIM card is going to
25 take information that's on the phone out.

1 Q So that might be one avenue. You could break
2 the SIM card in half or snap it, correct?

3 A You could, yes.

4 Q You know that the SIM card stores an enormous
5 amount of data? The phone's just a brick, right?

6 A No. I don't know that.

7 Q You can also, if you take the SIM card out,
8 you just get rid of the phone somehow, right, just
9 destroy it?

10 A Yes.

11 Q You might even consult with some kind of an
12 expert to help learn how to permanently erase things
13 from a phone like a forensics expert, for instance?

14 MR. LALLY: Objection.

15 THE COURT: Sustained.

16 BY MR. JACKSON:

17 Q On Saturday, January 29th, you spent much of
18 the day, much of the morning, rather, at Brian Albert's
19 house and then the rest of the day variously at Canton
20 P.D. You'd agree with that, correct?

21 A No. You said I spent much of the morning at
22 Brian Albert's house?

23 Q Correct. In other words, you went over at
24 whatever it was, 7:50, 8:00 o'clock, something like
25 that, and then until about 9:00?

1 A No. I got over there around 7:00 o'clock.
2 And I was there less than an hour. I wasn't there most
3 of the day.

4 Q Okay.

5 A I never went back there.

6 Q So you spent time at Brian Albert's house and
7 then much of the rest of the day at Canton P.D.,
8 correct?

9 A Yes.

10 Q And then the very next day, that Sunday, you
11 called a friend of yours, a guy named Matt Kelch,
12 didn't you?

13 A Yeah. He's my best friend. Yes.

14 Q And he's a special agent with the FBI, isn't
15 he?

16 A No, he's not.

17 Q Was he then?

18 A He's never been a special agent with the FBI.
19 He's a special agent with ATF.

20 Q My mistake. My mistake. I thought he was
21 with the FBI. He's a federal special agent?

22 A He's a coworker of mine. Yes.

23 Q Which makes him a federal special agent,
24 right?

25 A An ATF agent, yes.

1 Q And does he work for or have access to the
2 regional computer forensics lab?

3 A Yes. He works over there.

4 Q Okay. That is the FBI regional computer
5 forensics lab, correct?

6 A Yes.

7 Q That's how I got my mistake. I apologize.

8 A Well, I just make sure the record is reflected
9 correctly.

10 Q You and me both. So you reflected it
11 correctly.

12 So Matt Kelch is an ATF agent who works at the
13 FBI computer -- sorry -- regional computer forensics
14 lab, correct?

15 A Yes.

16 Q And he's an expert in digital forensics, is he
17 not?

18 A He has a level of expertise more than myself,
19 yes.

20 Q And he's one of your best friends?

21 A He is my best friend.

22 Q You spoke to him about the death of
23 John O'Keefe, did you not?

24 A Yes.

25 Q And you asked him for a personal favor sort of

1 off the books, correct?

2 MR. LALLY: Objection.

3 THE COURT: In that form, I'll sustain it.

4 BY MR. JACKSON:

5 Q Did you ask him for a personal favor?

6 A No.

7 Q Did you ask him to show you or consult with
8 you how to pull things off of your phone that you
9 decide to get off your phone?

10 A I asked him how I could pull text strings off
11 my cellular telephone for the purpose of providing them
12 to law enforcement.

13 Q This was not in connection with any case that
14 he was working, correct?

15 A That's correct.

16 Q It was not in connection with any case you
17 were working, correct?

18 MR. LALLY: Objection.

19 THE COURT: The objection is sustained, but
20 you've already answered. I'll strike that answer.
21 The second question you can answer.

22 Was this in connection to any case you were
23 working on?

24 THE WITNESS: No, Your Honor.

25 THE COURT: Next question.

1 BY MR. JACKSON:

2 Q But you asked your friend to utilize his
3 resources to teach you how to extract certain
4 information off your phone? Is that what you did?

5 A I asked him if it was possible to get this off
6 -- if there was a method to get this off my phone so I
7 could provide it to law enforcement.

8 Q And that information was selected by you,
9 correct?

10 A Two particular text threads, yes.

11 Q Right. In other words, there was nobody else
12 that was picking and choosing what to get off your
13 phone. That was just you?

14 A It was me, yes.

15 Q And the reason you did that, Mr. Higgins, is
16 that you wanted to control and limit the amount of
17 information that was pulled off your phone, right?

18 MR. LALLY: Objection.

19 THE COURT: Is that why you did it?

20 THE WITNESS: No. I did it because I wanted
21 to provide it to law enforcement, Your Honor.

22 THE COURT: Okay. Next question.

23 BY MR. JACKSON:

24 Q But you could have just provided your phone to
25 law enforcement and let them image the entire thing,

1 correct?

2 A I guess that was an option, yes.

3 Q And you knew that was an option at the time,
4 and you're a trained ATF agent?

5 A What's the question?

6 Q You knew it was an option to just hand your
7 phone over, just pick it up and give it to them?

8 A And there was also an option to provide it to
9 them, as well.

10 Q Right. But you chose the one that you got to
11 select the information, not the one where they would
12 get everything, correct?

13 MR. LALLY: Objection.

14 THE COURT: Sustained as to that form.

15 BY MR. JACKSON:

16 Q Did you actually go to the FBI computer
17 forensics lab?

18 A Yes. Let me correct that. I didn't go to the
19 lab, itself. I went to what they refer to as a kiosk
20 on the first floor over at FBI.

21 Q And that's --

22 A And all local P.D.s, law enforcement have
23 access to that.

24 Q And that's obviously --

25 A It's an unrestricted area. You can be in

1 there, as I understand it, unaccompanied if you are
2 local law enforcement. It's on the first floor.

3 Q That is a federal facility, however?

4 A Yes, it is.

5 Q Did you utilize any computer or data -- sorry
6 -- any data extraction machinery, if you will, a
7 computer or something, to extract this data?

8 A Well, it was a machine. I don't know what
9 it's called.

10 Q Okay. Fair enough. I'll use the word
11 "machine." I don't know what it's called, either.

12 So you hooked that phone up to a machine,
13 correct?

14 A Yes.

15 Q And that machine belonged to the FBI. It
16 didn't belong to you; is that right?

17 A That's correct.

18 Q So that was a federal resource, not for
19 anything having to do with any official case that you
20 were working; isn't that right?

21 MR. LALLY: Objection.

22 THE COURT: So I need to see you. I know this
23 is time-consuming. I need to see you.

24 We may as well use this time with me asking
25 counsel questions.

1 (Whereupon, there was a sidebar conference as
2 follows:)

3 THE COURT: Again, I don't know anything about
4 the proffer. Is that what this is about?

5 MR. JACKSON: No. This is the information
6 that was presented at the Federal Grand Jury.

7 THE COURT: Right. I read it. It has nothing
8 to do with his proffer?

9 MR. JACKSON: No, no. What I'm getting at is
10 he committed a crime. It is a federal crime to use
11 federal resources for personal gain. That's
12 exactly what he just admitted he did.

13 THE COURT: So he has a lawyer here, right,
14 who he should be able to consult as to whether he's
15 going to take the Fifth on that.

16 MR. JACKSON: It's on him. That's right. I
17 mean, it's on him. I want to ask one more
18 question; whether or not he knows it's a crime to
19 do what he did. And he can choose not to answer
20 it.

21 THE COURT: I know you're in a real hurry to
22 get this done.

23 MR. JACKSON: That's okay. I want to --

24 THE COURT: I need to get his lawyer in here.

25 MR. JACKSON: Okay.

1 THE COURT: Okay?

2 MR. JACKSON: Okay.

3 THE COURT: Do you know where his lawyer is?

4 MR. LALLY: In the building, but --

5 THE COURT: I have to take a recess in order
6 to consult with the lawyer. I'm going to ask him
7 whether he committed a crime. Why have a lawyer if
8 you can't consult with him on this?

9 MR. JACKSON: That's a good point.

10 THE COURT: So we need to take a recess.

11 MR. JACKSON: Yes, Your Honor.

12 THE COURT: Very quickly.

13 (Whereupon, the sidebar conference is paused.)

14 THE COURT: Jurors, I know we are leaving at
15 4:30. We need a quick five-minute recess.

16 (Whereupon, the jury is escorted from the courtroom
17 for a brief recess.)

18 (Whereupon, the sidebar conference continued.)

19 THE COURT: Will you tell the lawyer what the
20 question is that you're asking.

21 MR. JACKSON: That he's admitted that he
22 utilized federal resources for personal gain.
23 That's a violation of --

24 THE COURT: I mean, how is the mechanism -- is
25 Mr. Lally going to tell the lawyer what are you

1 going to say? Do we bring him in and you say these
2 are your questions?

3 MR. JACKSON: I think that -- I don't think
4 that the lawyer should be given a preview of what
5 we are going to say.

6 THE COURT: Well, he's got to know that his
7 client is going to be asked a question about
8 committing a crime.

9 MR. JACKSON: I think the lawyer should sit
10 right next to him, and I'll just have to put the
11 question up: Did you say this? I'm sorry. Did
12 you do this? Did you realize that that was a
13 crime?

14 I think he has already -- that that cat is
15 sort of already out of the bag.

16 THE COURT: It's not quite yet.

17 MR. JACKSON: Well, the conduct of this. I
18 mean, that's why I was asking him. I didn't know
19 how he did this. I had no idea that he actually
20 went to a federal facility and used a computer.
21 That's the crime.

22 MR. LALLY: In the Federal Grand Jury minutes,
23 number one; number two, I don't really understand
24 what the relevancy of this is as it applies to this
25 case.

1 MR. JACKSON: He is willing to commit a crime
2 in order to hide his data in the phone that he
3 ultimately destroyed. That's going way over and
4 above just, no, I don't have my phone.

5 THE COURT: So you don't have to explain to
6 Mr. Lally. All right? We are wasting time here.
7 If it's already in the Federal Grand Jury minutes,
8 I want the lawyer to know that you're about to
9 question him on this.

10 MR. JACKSON: Yes, Your Honor.

11 THE COURT: Again, what good is a lawyer if
12 it's not for that?

13 MR. JACKSON: I agree.

14 THE COURT: So do you have where in the
15 Federal Grand Jury minutes it is, Mr. Lally? I'm
16 trying to expedite this for your sake.

17 MR. JACKSON: Thank you. And what I would
18 suggest is that if we bring the lawyer in, I'll
19 make an offer of proof.

20 THE COURT: That's great.

21 MR. JACKSON: That will just be easier.

22 THE COURT: All right.

23 (Whereupon, the sidebar conference concluded.)

24 THE COURT: We may as well use this time with
25 me asking counsel questions.

1 (Whereupon, there was a sidebar conference as
2 follows:)

3 THE COURT: As soon as the lawyer comes in, we
4 will break. If you don't finish your cross today,
5 I will bend the rule about one lawyer/one question.
6 So if it's important to you that you're here on
7 Tuesday, I will let one of your colleagues pick
8 up later.

9 MR. JACKSON: I appreciate that. It is
10 important. It is just personal to me, but I deeply
11 do appreciate it.

12 THE COURT: All right. I'm trying to
13 accommodate you. There are just so many steps that
14 have been in court today, but this one is critical.
15 Were it not for the fact that I am trying to
16 accommodate you, I would break for the weekend.

17 MR. JACKSON: Yes.

18 MR. LALLY: Understood.

19 THE COURT: We may still have to. Counsel
20 needs to speak to his client. All right. So we'll
21 all stick around after 4:30. I apologize to the
22 staff, and I will have a colloquy with your client
23 at sidebar.

24 MR. JACKSON: Okay.

25 (Whereupon, the sidebar conference concluded and a

1 brief recess is taken.)

2 (Court resumes.)

3 (Defendant present. Jury not present.)

4 THE COURT: All right. Counsel, why don't you
5 come on over, please, Mr. Connolly. If you would
6 just stand next to your client. Mr. Jackson is
7 going to make an offer of proof for the question
8 he's about to ask your client or a couple of
9 questions he's about to ask your client. It
10 doesn't make any sense to me that somebody has
11 counsel and their counsel is not aware of the
12 potential issue. So you will hear the offer of
13 proof. I'll let you speak to Mr. Higgins before
14 this actually happens before the jury.

15 Please identify yourself.

16 MR. CONNOLLY: Yes. My name is William
17 Connolly. It's spelled C-O-N-N-O-L-L-Y.

18 MR. JACKSON: May I, Your Honor?

19 THE COURT: Yes.

20 MR. JACKSON: The witness has indicated that
21 he utilized federal resources for personal gain.
22 The specifics of that testimony have been as
23 follows:

24 He indicated that he contacted Matt Kelch, a
25 federal agent;

1 He indicated that he utilized a federal
2 facility. He called it an unsecured facility, but
3 it's a federal facility, notwithstanding;

4 And that the two of them, he and Agent Kelch,
5 utilized federal resources in the form of some kind
6 of a machine, as the witness indicated, for his own
7 personal gain so that he could, as a witness in no
8 official capacity, working any official case and in
9 Matt Kelch's capacity as an individual rather than
10 an agent, they both worked together to download
11 certain information from the witness's phone in
12 anticipation of turning that highly selected,
13 highly curated information over to law enforcement
14 so that he could later ultimately destroy his
15 phone, which this witness, in fact, did.

16 THE COURT: Okay. So it's not entirely -- I
17 disagree with you. I don't think it's reached that
18 level. His testimony was that he went into a kiosk
19 on the first floor where all local police
20 departments can go. It's unrestricted. It's on
21 the first floor. And we just got to the part about
22 a machine in the kiosk when you mentioned an FBI
23 resource.

24 So what is your question? What questions do
25 you intend to ask this witness now?

1 MR. JACKSON: Whether he is aware that under
2 5 CFR 2635.702 it is a federal offense to use any
3 public office for his own private gain or for the
4 gain of persons or organizations with which you are
5 associated personally.

6 In other words, an FBI agent or an ATF agent
7 cannot use federal resources for personal gain.
8 The fact that he contacted an ATF agent, the fact
9 that he utilized a facility that is owned by the
10 federal government, run by the federal government,
11 paid for by taxpayer dollars and the fact that he
12 used a machine that is owned by the federal
13 government to download certain information for his
14 own personal gain, that personal gain being these
15 are the curated texts that I'm going to turn over
16 to law enforcement. That's a federal offense.

17 THE COURT: All right. So those questions are
18 going to be asked. I don't know if there's been an
19 objection to them. I'm not sure I'm going to let
20 them in. But I wanted to give you the opportunity
21 of speaking privately with your client in the back
22 room there. Can you do it in short order, or do
23 you need more time?

24 MR. CONNOLLY: I can do it in about 10
25 seconds, Your Honor.

1 THE COURT: Okay.

2 MR. CONNOLLY: Sure, if you feel the need.
3 I'd like to talk to him.

4 THE COURT: So why don't you go back and talk
5 to him. We'll start getting the jury lined up.
6 (Whereupon, there was a brief pause.)

7 MR. CONNOLLY: Thank you, Your Honor.

8 THE COURT: All right. So we are ready to
9 proceed?

10 MR. JACKSON: I am, Your Honor. Thank you.

11 THE COURT: All right. Let's bring the jurors
12 in, please.

13 (Whereupon, the jury entered the courtroom.)

14 THE COURT: We have very few minutes left,
15 Mr. Jackson.

16 MR. JACKSON: Understood.

17 BY MR. JACKSON:

18 Q Mr. Higgins, you indicated that the phone was
19 hooked up to some sort of machine at the FBI kiosk,
20 correct?

21 A Yes.

22 Q You're aware, sir, that under 5 CFR 2635.702,
23 you may not use your public office for your own
24 personal or private gain or for the gain of persons or
25 organizations with which you are associated personally

1 under pain of a federal offense, correct?

2 MR. LALLY: Objection.

3 THE COURT: Are you aware of that, sir?

4 THE WITNESS: No, Your Honor.

5 THE COURT: Okay.

6 BY MR. JACKSON:

7 Q Are you aware that under 5 CFR 2634.704, it's
8 a felony, quote --

9 MR. LALLY: Objection, Your Honor. Asked
10 already.

11 THE COURT: Go ahead and finish your question.

12 BY MR. JACKSON:

13 Q -- for an employee. I'm sorry. An employee
14 has a duty to preserve and conserve government property
15 and shall not use such property or allow its use for
16 other than authorized purposes.

17 Were you aware of that federal regulation?

18 THE COURT: That objection is sustained.

19 BY MR. JACKSON:

20 Q Sir, notwithstanding those regulations, you
21 utilized the services of Matt Kelch as a friend and a
22 colleague but utilizing federal resources to pull
23 information off your phone, correct?

24 MR. LALLY: Objection.

25 THE COURT: Sustained as to that form.

1 BY MR. JACKSON:

2 Q In fact, you were successful in getting
3 information off your phone, which is the texts that you
4 turned over to the Commonwealth, correct?

5 MR. LALLY: Objection.

6 THE COURT: In that form, you're almost there,
7 Mr. Jackson. That form was improper.

8 BY MR. JACKSON:

9 Q The information that was ultimately pulled off
10 your phone was the information that you selected and
11 you and Matt Kelch worked together to get off your
12 phone, correct?

13 MR. LALLY: Objection.

14 THE COURT: Is that correct?

15 THE WITNESS: No, Your Honor. If I could
16 explain?

17 THE COURT: Sure.

18 THE WITNESS: He walked me through on how I
19 could pull the text string with John O'Keefe and
20 the defendant. He walked me through the process,
21 how to use the machine.

22 BY MR. JACKSON:

23 Q And then you did that?

24 A I did do that. That's correct.

25 Q And that's what you turned over to the police?

1 A That's correct.

2 Q And any other information would still be on
3 your phone, ending in 5421, correct?

4 A Well, that information stayed on my phone. I
5 just took those strings off and provided them to the
6 Mass. State Police.

7 Q So where is your phone?

8 A I do not have that phone anymore.

9 Q You've destroyed that phone, haven't you?

10 A No. I threw the phone away.

11 Q Well, that's destroying the phone, isn't it?

12 A I had every right to do that.

13 Q I didn't ask you about your rights. I asked
14 you what you did.

15 MR. LALLY: Objection.

16 THE COURT: Sustained.

17 BY MR. JACKSON:

18 Q You destroyed the phone by removing the SIM
19 card and breaking it in half, correct?

20 MR. LALLY: Objection.

21 THE COURT: Sustained.

22 BY MR. JACKSON:

23 Q Did you do that? Did you pull the SIM card
24 out?

25 MR. LALLY: Objection.

1 THE COURT: Did you pull the SIM card out of
2 your phone?

3 THE WITNESS: Your Honor, to the best of my
4 recollection, if I did take the SIM card out, I
5 would have -- when I threw it away, if I was going
6 to take it out, I would break it or cut it. But I
7 did not wipe the phone. I did not take anything
8 else off it. But, if I was going to throw the
9 phone away, that's what I would have done.

10 BY MR. JACKSON:

11 Q Well, you know as an ATF agent with electronic
12 data experience, when you pull the SIM card out and
13 break it and then throw the phone away and the SIM card
14 away, you don't need to wipe the phone?

15 MR. LALLY: Objection.

16 THE COURT: Sustained. Mr. Jackson, that's
17 it.

18 MR. JACKSON: Your Honor --

19 THE COURT: One more question.

20 MR. JACKSON: I can do this in 30 seconds, I
21 think.

22 BY MR. JACKSON:

23 Q You were aware that there was a court order
24 that you not alter, delete or destroy or in any way
25 manipulate your phone or the electronic data associated

1 with it, correct?

2 MR. LALLY: Objection.

3 THE COURT: As to what date?

4 MR. JACKSON: As of September 23rd -- I'm
5 sorry. September 30th, 2022.

6 MR. LALLY: Objection. I don't believe that's
7 what the court order was.

8 MR. JACKSON: Your Honor, I can make a quick
9 offer of proof. That's exactly what it was.

10 THE COURT: Were you aware of that? Was that
11 your understanding?

12 THE WITNESS: What's the question exactly,
13 Your Honor? I'm sorry.

14 THE COURT: Ask the question again.

15 MR. JACKSON: Sure.

16 BY MR. JACKSON:

17 Q Sure. Were you served with a copy of a notice
18 on September 30th, 2022 that you not alter or destroy
19 or manipulate anything on your phone on September 30th?

20 A I was served an order. Yes. That's correct.

21 Q Okay. And isn't it true that in another
22 hearing, you explained that on September 29th, the day
23 before you claim you got notice, you changed phone
24 carriers and changed phone numbers?

25 A And I maintained the phone.

1 Q Until you didn't when you destroyed it a month
2 later by pulling the SIM card out and throwing it away,
3 correct?

4 MR. LALLY: Objection.

5 THE COURT: Sustained.

6 BY MR. JACKSON:

7 Q Did you do that in October? Did you destroy
8 that phone?

9 MR. LALLY: Objection.

10 THE COURT: Sustained.

11 BY MR. JACKSON:

12 Q Did you pull the SIM card out of your phone,
13 Mr. Higgins?

14 THE COURT: Did you?

15 THE WITNESS: It's possible that I did. I
16 believe that's how I've testified, yes.

17 BY MR. JACKSON:

18 Q You testified --

19 A It's possible that if I took it out that it
20 was either cut or broken.

21 Q It's not just possible that --

22 A And that would have been after the date the
23 order was already denied.

24 Q Mr. Higgins --

25 THE COURT: Okay. Mr. Jackson --

1 MR. JACKSON: I have one question left, one
2 question.

3 BY MR. JACKSON:

4 Q Did you --

5 MR. JACKSON: Mr. Lally is already standing.
6 I haven't even started.

7 THE COURT: Have a seat, Mr. Lally. Go ahead.
8 Last question.

9 BY MR. JACKSON:

10 Q Mr. Higgins, very simply, and then we are
11 done, did you remove the SIM card for that phone, drive
12 onto a military base, throw the SIM card into one
13 dumpster and the phone in a different dumpster?

14 A That is not correct.

15 Q Did you testify that that's what you did?

16 THE COURT: That's one question, Mr. Jackson.

17 All right. Folks, that's it for today. We
18 will see you Tuesday. Have a great long weekend.
19 Please, it's very important, do not discuss this
20 case with anyone. Don't do any independent
21 research or investigation into this case. If you
22 happen to see, hear or read anything about this
23 case, please disregard it and let us know. We will
24 see you on Tuesday. Tuesday will be a full day.
25 (Whereupon, the jury exited the courtroom and is

1 excused until Tuesday.)

2 THE COURT: I will see counsel at sidebar.
3 Bring your client, Mr. Jackson. Bring your client.
4 (Whereupon, there was a sidebar conference as
5 follows:)

6 THE COURT: I will see counsel at sidebar.

7 THE CLERK: Counsel to sidebar.

8 THE COURT: Bring your client, Mr. Jackson.
9 Bring your client.

10 THE COURT REPORTER: I need complete quiet in
11 the courtroom, please. We are still on the record.

12 KAREN READ, Sworn

13 THE COURT: So these are our microphones that
14 you need to make sure you're heard in.

15 Would you tell me your full name, please?

16 MS. READ: Karen Read.

17 THE COURT: How old are you, Ms. Read?

18 MS. READ: Forty-four.

19 THE COURT: How far have you gone in school?

20 MS. READ: I have a master's degree.

21 THE COURT: In the last twenty-four hours,
22 have you had any drugs or alcohol that might affect
23 your judgment here today?

24 MS. READ: No.

25 THE COURT: Are you aware of any mental

1 illness that you might have or that you have
2 suffered from in the past?

3 MS. READ: No.

4 THE COURT: So you are represented by counsel
5 in this case, correct?

6 MS. READ: Yes.

7 THE COURT: And Mr. Jackson, by all accounts,
8 seems to be your lead counsel. Is that your view
9 of it?

10 MS. READ: Yes.

11 THE COURT: So Mr. Jackson has informed me
12 that he will not be here on Tuesday. It is the
13 only day we are meeting next week. Are you aware
14 that he will not be here?

15 MS. READ: I am.

16 THE COURT: Are you aware that this is a
17 critical juncture in your case?

18 MS. READ: Yes.

19 THE COURT: And that we are ready to go
20 forward and, indeed, this witness, Mr. Higgins,
21 will be on the stand first thing Monday morning. I
22 mean Tuesday morning.

23 MS. READ: Tuesday.

24 THE COURT: Are you aware of that?

25 MS. READ: Yes. My whole team is.

1 THE COURT: I could order Mr. Jackson to be
2 here Tuesday morning.

3 MS. READ: It isn't necessary.

4 THE COURT: And so this is something that
5 you've thought about?

6 MS. READ: Yes.

7 THE COURT: You've talked to your lawyers
8 about it?

9 MS. READ: Yes.

10 THE COURT: Whose decision is it about whether
11 Mr. Jackson is here on Tuesday to continue
12 representing you with this witness who is still on
13 the stand? Is it your decision?

14 MS. READ: It is my decision.

15 THE COURT: And you realize you can't come
16 back later and say, gee, I made a bad mistake. I
17 wish I never did that, and --

18 MS. READ: I would never do that.

19 THE COURT: Okay. Mr. Jackson, is there
20 anything else you think I should ask her?

21 MR. JACKSON: No, Your Honor. Thank you.

22 THE COURT: Mr. Lally, I don't know if you
23 heard my questions. Is there anything else you
24 think I need to ask Ms. Read?

25 MR. LALLY: No.

1 MR. JACKSON: Thank you.

2 THE COURT: All right. Thank you very much.

3 MR. JACKSON: I appreciate it, Your Honor.

4 THE COURT: So your client can go back, but I
5 want to talk to counsel for a minute.

6 Ms. McLaughlin, why don't you come over here.

7 So does the defense have anymore with this
8 witness?

9 MR. JACKSON: Yes. The only thing I didn't
10 get to do because of the time constraint covers the
11 federal grand jury transcript that showed that he
12 just lied. And I just need to --

13 THE COURT: I need more specifics about that.
14 What is in the federal grand jury?

15 MR. JACKSON: He said in front of the grand
16 jury that he took his phone. He removed the SIM
17 card. He broke it in half or he cut it in half.
18 He couldn't remember. He drove onto a military
19 base. He threw one part of the SIM card into one
20 receptacle or dumpster, threw another part of it in
21 another dumpster. Then he left the base.

22 THE COURT: Okay.

23 MR. JACKSON: That was his testimony. But he
24 just said, no, I would never do that.

25 THE COURT: No. I think he said he wasn't --

1 I think it was I don't remember doing that, if I
2 had done it.

3 MR. JACKSON: Maybe.

4 THE COURT: So who is going to be taking your
5 place Tuesday morning?

6 MR. JACKSON: We haven't even talked about
7 that.

8 THE COURT: I need to know.

9 MR. JACKSON: David.

10 THE COURT: All right. So you have a very
11 short bit of time left?

12 MR. JACKSON: Very. I mean, literally two,
13 three minutes. If it were me, it's two or three
14 minutes.

15 THE COURT: Okay.

16 MR. YANNETTI: I'll do the same.

17 THE COURT: All right. Who are the other
18 witnesses that you anticipate on Tuesday?

19 MR. LALLY: In large part, I don't know. I
20 would say it would certainly include Dr. Rice and
21 Dr. Faller from Good Samaritan and Nicholas Roberts
22 from the office of alcohol testing.

23 THE COURT: So you intend to put that evidence
24 in on Tuesday?

25 MR. LALLY: Yes. I'll have other witnesses.

1 I can certainly let counsel and the Court --

2 MR. YANNETTI: I would like to know --

3 THE COURT: I'm sorry. Only one at a time.

4 It's been a very long day, and our court reporter
5 has been doing a phenomenal job, far beyond what is
6 expected of her. So one at a time.

7 What were you saying?

8 MR. LALLY: So all I was saying is there will
9 be other witnesses. I need to figure out schedules
10 on that, and I can certainly let counsel and the
11 Court know that well in advance of Tuesday. I just
12 don't know.

13 THE COURT: Okay. Do you anticipate the
14 children may testify on Tuesday?

15 MR. LALLY: Possibly.

16 THE COURT: All right. I've issued an order
17 that the media cannot cover the children's
18 testimony. I think you all saw that weeks ago.

19 MR. JACKSON: We did.

20 THE COURT: And there is no objection to that
21 order, correct?

22 MR. YANNETTI: No objection.

23 THE COURT: Everybody is shaking their head.
24 The record doesn't pick up the shaking of the head.

25 MR. JACKSON: No objection.

1 MR. LALLY: No.

2 THE COURT: All right. We will see you
3 Tuesday, and we'll see you the following week.

4 MR. JACKSON: Thank you.

5 MR. YANNETTI: Thank you.

6 MR. LALLY: Thank you, Your Honor.

7 (Whereupon, the sidebar conference concluded, and
8 the Court adjourned at 4:45.)
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C E R T I F I C A T E

I, Paula M. Mills, retired certified court reporter, do hereby certify that the foregoing pages, page 23-3 to 23-319, is a true and accurate transcription of the voice recording in the aforementioned matter to the best of my skill and ability.

This, the 12th day of February, 2025.

\s\ Paula M. Mills

Paula M. Mills

Retired Certified Court Reporter
and Court Transcriptionist